CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1931

No. 734

THE UNITED STATES OF AMERICA, PETITIONER

vs.

COMMERCIAL CREDIT COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 26, 1932
CERTIORARI GRANTED MARCH 21, 1932

SUPREME COURT OF THE UNITED STATES

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A [Caption omitted.]

1 In United States Circuit Court of Appeals, Fifth Circuit

No. 6221

COMMERCIAL CREDIT COMPANY, INC., APPELLANT
versus
THE UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the Southern District of Texas, in cause No. 199, law docket, United States of America *vs.* One De Soto Coupé, Commercial Credit Company, Inc., intervener, Corpus Christi Division, with which are consolidated causes No. 197, law docket, United States of America *vs.* One De Soto Coupé, Commercial Credit Company, Inc., intervener, Corpus Christi Division, and No. 413, law docket, United States of America *vs.* One Fargo Truck, Commercial Credit Company, Inc., intervener, Laredo Division

Stipulation as to printing record

Filed April 24, 1931

It is hereby stipulated by and between counsel for the United States of America, appellee, and Commercial Credit Company, Inc., a corporation, appellant, subject to the approval of the court, as follows:

I

That in the printing of the transcript of the above cause on
2 appeal the full record of the proceedings in law No. 199 shall be printed first, and that the abbreviated record, as hereinafter set out, of the consolidated cases shall follow it in a single binder.

II

That inasmuch as certain instruments filed in all three cases are identical in words the parties, for the purpose of facilitating the court in considering the transcript of this cause, agree that the bodies of the following instruments may be omitted from the printed record and that the printed record shall contain only the statement of the clerk as to their nature and the indorsement of the clerk as to their time of filing:

A. Stipulations as to the sale of property appearing in the typed transcript at pages 23–24 and page 48, being identical with the stipulation appearing on pages 77–78.

B. Petitions for appeal appearing in the typed transcript at page 49, which is identical with the petition for appeal appearing on pages 79–80.

C. Assignments of error appearing in the typed transcript at pages 50–52, being identical with the assignments of error on page 83–85.

D. Appeal bonds appearing in the type transcript at pages 28–29 and 53–54, being identical with the appeal bond appearing on pages 86–87.

And this stipulation shall be printed as a part of such transcript in lieu of such instruments.

H. M. HOLDEN,
(Signed) By M. MCCORQUODALE,
Attorney for Appellee.
(Signed) By DALLAS C. BIGGERS,
Attorney for Appellant.

3 In United States District Court for the Southern District of Texas, Laredo & Corpus Christi Divisions

Consolidated causes

No. 413, law, Laredo Division

UNITED STATES *vs.* ONE FARGO TRUCK

No. 197, law, Corpus Christi Division

UNITED STATES *vs.* ONE DE SOTO COUPÉ

No. 199, law, Corpus Christi Division

UNITED STATES *vs.* ONE DE SOTO COUPÉ

Caption

Be it remembered that in the above entitled and number causes, lately pending in said court, in which final judgments were rendered, as follows, in cause No. 413, law, at Laredo Division, at the regular November term, 1930, on January 16, 1931; in cause No. 197, law, at the Corpus Christi Division, at the regular January term, 1931, on February 7th, 1931; and in cause No. 199, law, at Corpus Christi Division, at the regular January term, 1931, on February 20th, 1931, the honorable Joseph C. Hutcheson, jr., judge of the District Court of the United States for the Southern District of Texas, presiding, the following proceedings were had and taken in said court, to wit:

In United States District Court

Number 199, law

UNITED STATES OF AMERICA, LIBELANT
vs.
ONE DE SOTO COUPÉ, RESPONDENT
AND
COMMERCIAL CREDIT COMPANY, INC., A CORPORATION, INTERVENER-respondent

Præcipe for transcript

Filed March 17, 1931

You are hereby notified to prepare and certify copies of such papers filed and all such proceedings had in the above-entitled action as are necessary to the determination of the cause on appeal and in particular the following instruments:

1. Libel.
2. Answer and motion in intervention of Commercial Credit Company, Inc.
3. Findings of fact and conclusions of law.
3a. Waiver of jury.
4. Decree of court.
5. Stipulations as to consolidation, etc.
6. Stipulation as to sale of property.
7. Petition for appeal.
8. Order consolidating and allowing appeal.
9. Assignments of error.
10. Appeal bond.
11. Citation and acceptance of service.
12. Præcipe and acceptance of service.
13. Certificate.

DALLAS C. BIGGERS,
ROY W. McDONALD,
Attorneys for Appellant.

Receipt of a copy of the above præcipe is acknowledged and service of the same is hereby acknowledged this 9 day of March, A. D. 1931.

H. M. HOLDEN,
United States Attorney.
M. S. McCORQUODALE,
Assistant United States Attorney.

6 In United States District Court

Law No. 199

UNITED STATES OF AMERICA

vs.

ONE DE SOTO COUPÉ AND ONE LOT OF INTOXICATING LIQUOR (SEIZED from T. W. Lewis on Oct. 29, 1930)

Libel

Filed Nov. 29, 1930

To Honorable J. C. HUTCHESON, Jr.,
Judge of said court:

Now comes the United States of America, by H. M. Holden, United States attorney for the southern district of Texas, and files this its libel of information against one De Soto coupé, engine E-CK-10429-E, license 1-281-500, and one lot of intoxicating liquor (seized from T. W. Lewis), and for cause of forfeiture would show that said automobile was seized by E. B. McCulley, Joe Jackson, and C. H. Wright, customs officers of the United States, on or about October 29, 1930, in Brooks County, Texas, and is now in possession of customs officers of the United States as a result of the seizure of said automobile, while there was being concealed and transported therein foreign merchandise, to wit, whiskey and alcohol, which has lately theretofore been unlawfully imported unto the United States.

That on or about the 19th day of November, A. D. 1930, Commercial Credit Co., Inc., of Dallas, Dallas County, Texas, as
7 principal, and United States Fidelity & Guaranty Company, as sureties, did bind themselves to the United States in the sum of two hundred and fifty ($250.00) dollars, in the event of the condemnation of said automobile, to pay to the United States all of the costs and expenses of the proceedings to obtain such condemnation; that by virtue of the premises such principal and sureties are bound and liable to pay to the United States the costs and expenses of this cause.

Wherefore, said United States attorney, on behalf of the United States of America, prays that monition issue in accordance with the usual procedure of this court, and that citation be issued and served on the above principal and sureties; that warrant of seizure issue to the marshal for the Southern District of Texas, commanding him to seize said automobile and that judgment of forfeiture be decreed against said automobile, and that plaintiff do have and recover its costs and expenses in this cause from the said Commercial Credit Company, Inc., and the said United States Fidelity & Guaranty Company.

H. M. HOLDEN,
United States Attorney.

In United States District Court

At Law, No. 199

UNITED STATES OF AMERICA *vs.* ONE DE SOTO COUPÉ

Answer and motion to dismiss of Commercial Credit Company, Inc., claimant

Filed January 2, 1931

To the honorable J. C. HUTCHESON, Jr.,
Judge of said Court.

Now come the Commercial Credit Company, Inc., hereinafter called "claimant," and United States Fidelity and Guaranty Company, surety upon claimant's cost bond, and in answer to the citation herein, file this their answer and motion to dismiss the above styled and numbered cause, and respectfully move the court to dismiss the libel proceedings herein, upon the grounds and the reasons therefor, as follows:

8

1

Claimant would respectfully show that it is a corporation organized under the laws of the State of Texas and engaged in the automobile finance business, with a branch office at Dallas, Texas; that on or about September 9th, 1930, the Perry Motor Company of Dallas, Texas, a reputable automobile dealer, sold and delivered to one T. W. Lewis, Dallas, Texas, one De Soto coupé, motor No. 10429, serial No. 5008687, under a conditional sale contract, a true and correct copy of which is attached hereto as Exhibit A and here referred to and made a part hereof, as though copied here in full; that the purchaser paid three hundred and eighteen and 37/100 ($318.37) dollars in cash and trade-in allowance of the total purchase price of eleven hundred and thirty-one and 97/100 ($1131.97) dollars, and executed one promissory note for eight hundred and thirteen and 60/100 ($813.60) dollars, payable in twelve equal monthly payments; that such conditional sales contract and promissory note were duly assigned to and purchased by your claimant on September 9th, 1930, in the regular course of its automobile financing business, and the same are now owned and held by your claimant in its own right; that thereafter default occurred in the payment of such note and there is not past due and unpaid to your claimant under the chattel-mortgage contract attached hereto and on the note the full sum of seven hundred and sixty-five and 40/100 ($765.40) dollars; that such chattel-mortgage contract provided in its terms that the purchaser covenanted that he would not use or cause or permit to be used the car therein described for the transportation of any liquor for commercial or personal use prohibited by any

9

Federal or State statute to be transported, and provided that should such car be used for such purpose or any unlawful purpose, such improper use should be considered a default under the mortgage, entitling the holder of such mortgage, claimant herein, to immediate possession of such chattel; that under the terms of such contract your claimant has declared the entire balance immediately due and payable, and it is now and has been since the time of default entitled to the immediate possession of the above-described automobile.

2

Claimant further shows that neither the Perry Motor Company, nor the claimant, had any notice or knowledge that such automobile was being used or would be used in the violation of the national prohibition act or any other law; that neither the dealer, the original lien holder, nor this claimant had notice of or knowledge of any facts that would indicate or tend to indicate that such automobile would be illegally used; that such lien was and is a bona fide lien created without any knowledge on the part of the lienor, the dealer, or this claimant that such property would be used illegally, and that a careful investigation was made as to the character, reputation, and financial standing of the purchaser by reputable credit agencies and a careful and thorough investigation was made of his record; that your claimant and the dealer each and both carefully investigated such contract and did not learn any facts which would put them upon notice of any liquor hazard or which would give rise to any suspicion that the said T. W. Lewis might use the property in violation of law.

3

Claimant would further show that on or about the 29th day of October, 1930, the above-described automobile was seized by Federal officials near Falfurrias, Texas, and it is alleged that at such time it contained a quantity of alleged intoxicating liquors which are described in the petition for libel, which allegation the claimant does not know to be either true or false, and which allegation claimant demands to be proved.

Your claimant is further informed that the said automobile is now in the hands of the United States marshal at Laredo, Texas.

4

Claimant would respectfully show to the court upon information and belief that at the time of the alleged seizure of such automobile and liquor, and for a long distance prior thereto, the automobile had been moving; that it had been in motion for many miles before it was seized by the officials; that the person in possession of such car was driving the same along the highway, transporting the alleged intoxicating liquor, if any, in the said automobile at the time of the

BUYER'S STATEMENT

Date 9-9-30 19

IT IS ABSOLUTELY NECESSARY THAT THIS FORM BE FILLED IN COMPLETELY

To Terry Motor Co (Name of Dealer) — Town Dallas State Tex

For the purpose of securing credit from you on my (our) obligation hereto attached given per statement herein for a NEW ..... (Passenger Car or Commercial Car or Tractor), delivery and receipt of which is hereby acknowledged, I (we) make the following representations: I am (we are) the owner of the property described herein, that I (we) can meet the payments provided for in said obligation as they become due, and I (we) COVENANT NOT TO SELL, TRADE, ENCUMBER OR GIVE UP POSSESSION of the Car or Tractor, and that the Car WILL NOT BE USED FOR PASSENGER HIRE without your WRITTEN CONSENT, until paid for in full:

Print Name ..... (Purchaser) ..... (Co-purchaser)

Home Address ..... (No. and Street) ..... How Long ..... (City and State) ..... Phone

Living with Parent ..... Landlord's Name ..... How Long ..... (Mortgagee's Name)

Previous Home Address ..... (No. and Street) ..... (City and State)

Age ..... Married ..... Single ..... Number of Dependents ..... Occupation ..... How Long

Real Estate Holdings ..... Address ..... Present Value $ ..... Mortgage $

Recorded in Name of ..... (Purchaser's name in words here) ..... (City and State)

Present Employer ..... (No. and Street) ..... How Long

Business Address ..... (No. and Street) ..... Position ..... Salary

Former Employer ..... (No. and Street) ..... (City and State)

Checking Account ..... (Name) ..... (No. and Street) ..... (City and State)

Year	Model	Make	Type (Open or Closed)	Used or New at Time of Purchase	Motor or Serial No.	Cash Price	Amount Paid on Account

Previous Car Purchased from ..... (Name) ..... (Address)

Notes Carried by ..... (Name) ..... (Address)

Trade Reference ..... (Name) ..... (Address)

Trade Reference ..... (Name) ..... (Address)

Deposit with Order Not Given ..... Monthly Installments of $ ..... to ..... (Name) ..... (Address)

Life Insurance payable to ..... (Name of Insurance Company) ..... (Address)

Fire and Theft Insurance payable to ..... (Name of Insurance Company) ..... (Address)

Car will be kept principally at ..... (No. and Street) ..... (City and State)

Proposed Garage and Owner of Premises ..... (Name) ..... (Address)

Witness .....

Undersigned guarantees the payment of the above obligation and assigns upon demand.

STATEMENT OF ITEMS COVERING BUYER'S OBLIGATION

Cash Price of Car, Tractor, Truck or Chassis	998.00
Freight and War Tax	
Cash Selling or Rental Price	998.37
Less: Cash Payment	50.00
Less: Allowance on Purchased Car	318.37
Unpaid Balance	680.00
Add for Credit Sale	133.60
Amount of Note	813.60
Divided Into 18 Equal Monthly Payments of	45.20

Make of "Trade In"	Type of Body	Year Model	Motor No.
Ford	Coupe	1928	A3685860

IMPORTANT — BUYER MUST SIGN ASSIGNMENTS ON REVERSE SIDE

IMPORTANT — RECORDER'S RECEIPT — ASSIGNED MORTGAGE

FILL IN — o'clock M — recorded in book — Number — Deputy or Clerk

109672—32. (Face p. 7.) No. 2

813.60
105.74
707.86
680
27

Exhibit A to answer and motion to dismiss

Form 1000—Texas

CHATTEL MORTGAGE

(DUPLICATE-ORIGINAL)

Know All Men by These Presents, that J. T. Lewis (Mortgagor's Name) of Dallas (Mortgagor's Town)

County of Dallas State of Tex party of first part, mortgagor, being justly indebted to

Ferry Motor Co (Mortgagee's Name) of Dallas (Mortgagee's Town) County of Dallas State of Tex

Party of the second part, mortgagee, in the sum of Eight Hundred Thirteen & 60/100 Dollars ($ 813.60),

(Amount given in words here)

the same being the unpaid part of the purchase price of Other Purchases Plus Interest to Date Dollars ($ 1131.92),

(Purchase price in words here)

for the hereinafter described property, which indebtedness is hereby confessed and acknowledged (and which indebtedness, together with interest thereon after maturity at the highest legal contract rate, the mortgagor agrees to pay), for the purpose of securing payment of said debt and interest, and in consideration of the sum of One Dollar ($1.00), the receipt whereof is hereby acknowledged, has granted, bargained, sold, assigned and mortgaged, and by these presents does grant, bargain, sell, assign and mortgage unto said mortgagee the following described goods, chattels and personal property, to wit:

One Passenger or Commercial Car or Tractor (hereinafter called "car."):

Year	Model	Make	Type of Body & Seating Capacity	New or Used	Manufacturer's Serial No.	Motor No.	Adv. H. P.	No. Cyl.	Last	Last Price F. O. B. Factory	Cash Selling Price Including Extras
32	Coupe	DeSoto		New	5008687	1047					

complete with all standard equipment attachments and equipment, which said personal property is to remain in the possession of said mortgagor as long as the mortgagor shall perform the said mortgage, said chattels, said debt and all security sale and secure, and the conditions of this mortgage are void, and said mortgagor hereby agrees to leave and clear from any and all encumbrances.

TO HAVE AND TO HOLD the same unto said mortgagee, said mortgagee's heirs, personal representatives, successors and assigns forever.

Provided, however, and these presents are upon the express condition, that if said mortgagor shall well and truly pay or cause to be paid to said mortgagee, said sum above mentioned, with interest thereon, in accordance with the terms of his certain promissory note bearing even date herewith, payable to said mortgagor, payable to said mortgagee or order in 18 monthly installments of $ 45.25 each and maturing on the same day dates of said respective installments, payable at the office of Commercial Credit Company, Inc. Dallas Tex with interest after maturity at the highest legal contract rate until paid, and any renewals of the same, or any part thereof, with interest thereon at the highest legal contract rate, and shall punctually and faithfully perform each, all and every the covenants, stipulations and agreements herein contained on his part to be performed, then this instrument shall be void, otherwise to remain in full force and effect. It is agreed that said note may be detached for collection.

said mortgagor further promises that he will use said goods and chattels with reasonable care, skill and caution, and keep same in good repair, without any liability on the mortgagee and under shelter, and will not permit the same to be damaged, injured or depreciated, and will not [illegible] sell, assign or dispose of said goods and chattels, or any interest therein, or remove or permit the same to be removed from the county wherein he, she, it, resides, without the written consent of said mortgagee, and will not encumber or permit any encumbrance or lien of any kind against the same; and that he will pay all taxes that may be levied against said goods and chattels, this instrument or the indebtedness secured hereby.

Mortgagor covenants that he will not use or cause or permit to be used the Car herein mentioned for the transportation of liquor, intoxicating beverages or other beverage, for personal or commercial use, prohibited by any Federal or State statute to be transported, and it is hereby agreed that should the Car, hereinbefore described be used for such purpose or any other unlawful purpose, it shall be considered as a default under the mortgage whether or not, there shall be a default under any other terms or conditions thereof, which shall entitle the holder hereof to immediate [illegible] of said chattels, by replevin or otherwise, of the Car herein described.

Mortgagee may, at its option, at the expense of mortgagor, insure said goods and chattels until fully paid against loss by fire and theft for not less than the amount [illegible] and said policy and/or policies shall be payable to and protect the interest of mortgagee, and mortgagor may cancel such insurance at any time and shall deliver the return premium, if any, therefor.

And in case said mortgagor shall neglect or refuse to pay said taxes as aforesaid, or permit said goods or chattels to be damaged, injured or depreciated, then said mortgagee may at said mortgagee's option pay all such taxes and assessments aforesaid, repair any damage or injuries and prevent any depreciation; and all sums of money thus expended are hereby secured by these presents and shall be repayable upon demand from said mortgagor to said mortgagee, and may be retained by said mortgagee from the proceeds of the sale of said goods and chattels herein authorized.

In case default be made in the payment of said debt or interest after maturity, or of any of the payments scheduled on said note, or any extension alone or renewals thereof, or if any execution, attachment, sequestration or other writ shall be levied on said goods and chattels, or if a petition in bankruptcy shall be filed by or against said mortgagor, or said mortgagor shall make an assignment for the benefit of his creditors, or if said mortgagor shall fail to pay [illegible] any of the covenants, stipulations and agreements herein contained on his part to be performed, or if any insurance company should cancel or fail to [illegible] against [illegible] and [illegible] said mortgagor, said debt or any part thereof, or if any insurance, said chattels, said debt or any part thereof, or shall choose so to do, then upon the happening of said contingencies or any of them, the whole amount hereby secured, or such of said [illegible] shall become due and payable, and said mortgagee at his option, without notice, is hereby authorized to enter upon the premises of the mortgagor or other place where said property might be, and [illegible] said goods and chattels, without legal proceedings, [illegible] and [illegible] said mortgagor, and sell the same at public auction, [illegible] and apply the proceeds of said sale, without demand of said mortgagor, [illegible] and [illegible] the payment of said indebtedness or any part thereof, in such manner as said mortgagee may elect, rendering the surplus, if any, unto said mortgagor, his executors, administrators and assigns upon demand.

And said mortgagor may [illegible] and shall [illegible] said [illegible] and [illegible] said property shall fall [illegible] said debt.

The above described goods and chattels when not in use will be stored at [illegible] Garage located at [illegible] Street 5211 [illegible]

Street 611 Reagan City Dallas State Texas

IN WITNESS WHEREOF, the mortgagor has hereunto set his hand and seal this 9th day of Sept 1930

at Dallas, Texas

Witness: [signature] (Purchaser) F. H. Lewis (L. S.)

Address:

Witness: E. F. Reagan (L. S.)

Address:

STATEMENT OF ITEMS COVERING BUYER'S OBLIGATION

Cash Price of Car, Tractor, Truck or Chassis $ 990.00

Freight and War Tax

Cash Selling or Rental Price

Less: Cash Payment

Allowance on

Unpaid Balance 660.00

Add for Credit Sale 132.00

Amount of Note 792.00

Divided Into 18 Equal Monthly Payments of 44.00

IMPORTANT

BUYER MUST SIGN ASSIGNMENTS ON REVERSE SIDE

RECORDER'S RECEIPT

CHATTEL MORTGAGE

From To

IMPORTANT

County of

State of

I hereby certify that copy of the within chattel mortgage was received in my office at o'clock M. and recorded in book

Make of "Truck In"	Type of Body	Year Models	Serial No.	Motor No.
Ford	Coupe	1928	A 3295450	

By Recorder

Deputy or Clerk

Fee $

1008T4—32. (Sec. p. T.) No. 2

seizure and immediately prior to it; that such driver at the time of the seizure, if violating any law, which this claimant does not know, was engaged in the illegal transportation of liquor in violation of the terms of the national prohibition act; that at the time of such seizure the said coupé was hailed while in motion and was
11 stopped by Federal officials and was searched in accordance with the provisions of the applicable prohibition statutes; that the acts of the driver from the time that the coupé first came under the observation of the Federal officials until the time of the stopping thereof, search, and seizure of the contents thereof, was simply to drive the coupé from the point of first observation to the point of the seizure and that the illegal act committed by the driver constituted a violation of the national prohibition act and an illegal transportation of the alleged intoxicating liquor; that the provisions of sec. 26 providing for the forfeiture of vehicles seized while being used for the illegal transportation of liquor are exclusive and that the libel herein sought under the customs act is improper, illegal, contrary to law, and should be dismissed.

Wherefore, your claimant respectfully shows to the court that it has no jurisdiction to forfeit the above-described automobile under the terms of the tariff act of the United States of America; that the sole and exclusive jurisdiction in this court is to forfeit the said automobile under the terms of the prohibition act under which claimant is entitled to have its lien recognized; that the prohibition act with reference to the forfeiture of automobiles, used in the illegal transportation of intoxicating liquors, supplants the terms of the tariff act with respect to automobiles which are seized while being so used for the wrongful transportation of liquor; that this libel proceeding is brought under the customs act without authority and without jurisdiction in this honorable court to render a decree forfeiting this claimant's right in and lien on such car.

Wherefore, your claimant respectfully moves that on final
12 hearing hereof the libel proceeding herein instituted against the above-described automobile be in all things dismissed at the cost of the plaintiff, and that the district attorney be instructed to proceed with forfeiture of the above-described property under the terms of the national prohibition act.

DALLAS C. BIGGERS,
ROY W. MCDONALD,
Attorney for Claimant.

[*Duly sworn to by Roy W. McDonald; jurat omitted in printing.*]

13 In United States District Court

Law No. 199

UNITED STATES OF AMERICA

vs.

ONE DE SOTO COUPÉ

Findings of fact and conclusions of law

Filed February 7, 1931

I

That on or about October 29, 1930, Roy Campbell was, and is, collector of customs of the United States at San Antonio, Texas; the county of Brooks, State of Texas, is in his district.

II

That on or about October 29, 1930, near the town of Encono, county of Brooks, and within the Corpus Christi Division of the Southern Judicial District of Texas, one E. B. McCulley and one C. H. Wright, customs inspectors of the United States, acting on behalf of and for the said Roy Campbell, seized a certain De Soto Coupé, license No. 1281500, motor No. ECK–10429–E, being the same automobile as is the respondent in the above libel.

III

That at the time said automobile was seized there was deposited thereon smuggled merchandise, to wit, eighteen five-gallon cans of alcohol and seventeen quarts of straight American whiskey; that said whiskey and alcohol were fit and intended for beverage purposes and contained more than one-half of one per cent of alcohol, by volume; that said merchandise was subject to duty which had not been paid, and said merchandise was imported into the United
14 States contrary to law, without the payment of duty thereon and without being declared to United States customs officers; that there are no revenue stamps of any sort on the containers of said merchandise; that said alcohol was in containers bearings the following impressed labels: "Alcohol desturbado cristalino y de la mas alta graduacion; Marco Victoria; Supo 9 lits.; United Sugar Companies, Los Mochis, Sinaloa, Mexico; B de Ro No. 1"; that the whiskey was labeled "American straight whiskey, bottled in Juarez, Mexico."

IV

That the facts of the seizure are as follows:

That shortly before midnight in the evening of October 29, 1930, E. B. McCulley, a United States customs inspector, Bob Smith, Texas

ranger, and L. E. Hargrove, a fruit inspector, was stationed on the San Antonio-Hidalgo Highway, a public highway in Brooks County, in the State of Texas. They had information that the above-described automobile would be driven along this highway by T. W. Lewis and that the automobile would be loaded with liquor. The officers stopped the car on the highway, and upon search of the car found the above-described liquor in the car. T. W. Lewis, the driver, admitted that he had bought the liquor in Reynosa, Mexico, at a wholesale house and arranged to have it delivered on the American side of the Rio Grande, and loaded it on his car at a point south of McAllen, Texas, between the town of Hidalgo and McAllen, Texas. The labels and stamps on the alcohol and whiskey were genuine labels and stamps of Mexican breweries, and the alcohol and liquor were manufactured in Mexico and smuggled into the United States without the payment of duty thereon
15 and without being declared to United States customs officers. The car was traveling north and going from the direction of the border. The car was being driven along the highway by T. W. Lewis with the alcohol and liquor on it at the time the car was stopped by the officers.

V

That the said E. B. McCulley was a mounted customs inspector; that he has been in the Customs Service at Falfurrias, Texas, for approximately two years; that during such time he had made numerous seizures of contraband intoxicating liquors in Falfurrias; that he has never made any seizures, nor known of any seizures, of any contraband merchandise except intoxicating liquors and the means of their conveyance at Falfurrias; that all of such liquors so seized bore genuine labels of breweries which are located in Mexico, and such liquors had been smuggled into the United States; that Falfurrias is between seventy and eighty miles from the nearest point on the Mexican border.

VI

That the Commercial Credit Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Texas.

VII

That on the 9th day of September, 1930, one T. W. Lewis purchased from the Perry Motor Company of Dallas, Texas, a reputable automobile dealer, the above-described automobile under a chattel-mortgage contract of sale, pursuant to which said dealer retained a purchase-money lien upon such car until the purchase price
16 thereof should have been duly paid; that at the time of said sale said corporation required and secured a credit statement from said purchaser, in which said purchaser alleged that he was

engaged in business as a salesman; that said purchaser gave credit references and other information in accordance with the customary course of the dealer's business; that thereafter such note and mortgage were, for a valuable consideration, sold to the Commercial Credit Company, Inc., and it is the owner and holder of a valid lien upon such automobile, on which there is at this time an unpaid balance of seven hundred and sixty-five and 40/100 dollars ($765.40).

VIII

That such lien is a purchase-money chattel-mortgage lien and is bona fide; that it was created by the dealer in good faith, without any knowledge of any facts which would put the dealer upon notice that such automobile might be used in violation of any laws of the State of Texas or of the United States; that such lien contained a covenant that the purchaser would not use the automobile in violation of any Federal or State *statute* [statute] with reference to intoxicating liquor; that the Commercial Credit Company, Inc., acted in good faith in buying such chattel-mortgaged lien; that it had no knowledge of any facts indicating, or tending to indicate, that the purchaser would use such automobile in violation of any Federal or State statute; that the seizure in this case was incurred without willful [wilful] negligence or without any intention on the part of the Commercial Credit Company, Inc., to defraud the revenue or to violate the law.

IX

That Commercial Credit Company, Inc., claimant herein, had no notice that said automobile was being used for illegal purposes and knew of no facts or circumstances which would reasonably
17 or otherwise lead them to believe that the automobile was being so used; that the Commercial Credit Company, Inc., is now the legal owner of the chattel mortgage upon said De Soto coupé; that no payments have been made under the aforementioned chattel-mortgage contract since the 29th day of October, 1930; that the Commercial Credit Company, Inc., is under the terms of such chattel mortgage entitled to the immediate and exclusive possession of said automobile except for the claims of the Government as herein asserted.

From the foregoing facts the court finds as conclusions of law:

I

That the above-named vehicle should be forfeited to the United States of America because smuggled merchandise was seized on said vehicle.

II

That the libelant, United States of America, should recover from the intervener and claimant, Commercial Credit Company, Inc., and the United States Fidelity and Guaranty Company, its surety, the costs of suit, and the storage and warehouse charges properly incurred since the date of seizure.

III

That the claim of the intervener to the property or the proceeds thereof shall be denied and the forfeiture shall be made absolute against the Commercial Credit Company, Inc.

J. C. HUTCHESON, Jr., *Judge.*

O. K. as to form.

DALLAS C. BIGGERS.
ROY W. MCDONALD.

18 In United States District Court

File 17515. Law 199

THE UNITED STATES OF AMERICA

vs.

ONE DE SOTO COUPÉ AND ONE LOT OF INTOXICATING LIQUOR (SEIZED from T. W. Lewis on October 29, 1930)

Waiver of jury

Filed January 6, 1931

It is stipulated by the United States of America, plaintiff, and by the Commercial Credit Company, Incorporated, and the United States Fidelity & Guaranty Company of Maryland, claimant and surety, respectively, that a jury trial in the above styled and numbered case shall be by both parties waived.

ALBERT THOMAS,
Attorney for United States of America, Plaintiff.
DALLAS C. BIGGERS,
ROY W. MCDONALD,
Attorney for Commercial Credit Company, Inc.,
and United States Fidelity & Guaranty Company of Maryland,
Claimant and Surety, Respectively.

In United States District Court

Law No. 199

UNITED STATES OF AMERICA

vs.

ONE DE SOTO COUPÉ AND ONE LOT OF INTOXICATING LIQUOR (SEIZED from T. W. Lewis on October 29, 1930)

Final judgment

Filed February 21, 1931

On this 20th day of February, A. D. 1931, came on to be
19 heard the above styled and numbered cause, and it appearing to the court that the above-styled automobile was seized while there was deposited and concealed therein certain foreign distilled liquor which had lately theretofore been imported into the United States contrary to law; that libel was filed herein and monition duly published; and that no claim was filed herein, except that of the Commercial Credit Company;

And it further appearing to the court that Commercial Credit Company, Inc., of Dallas, Texas, as principal, and United States Fidelity & Guaranty Company as sureties, did bind themselves to the United States in the sum of two hundred and fifty ($250.00) dollars, in the event of the condemnation and forfeiture of said automobile, to pay to the United States all of the costs and expenses of the proceedings to obtain such condemnation and forfeiture;

It is ordered, adjudged, and decreed that said automobile be, and the same is hereby, forfeited to the United States, and that intervener take nothing by reason of its intervention.

And it further appearing to the court that request is made herein by the honorable Secretary of the Treasury, A. W. Mellon, that the car, if forfeited, be delivered to the collector of customs, San Antonio, Texas, for use in enforcement of the customs laws; that a bona fide appeal is being prosecuted in this case, and that the delivery of the car to the collector of customs would result in its use and depreciation during the determination of the appeal, or if the car were ordered delivered to the collector of customs in the exercise of this court's discretion, and appellant filed a supersedeas bond it
20 would result in the storage of the car and its depreciation while this case is on appeal, and that such bond would also prevent customs officers from using the car during the time the appeal in this case is being prosecuted; that an order providing for the sale of the car so that the proceeds of the sale may be available to the successful party upon the determination of the appeal is the proper order, and the one which the court should issue, in the exer-

cise of sound discretion, as to whether the car should be ordered delivered to the collector of customs for use in enforcement work;

It is ordered, adjudged, and decreed that said car be by the marshal sold as provided by law, and the proceeds disposed of as provided by law.

It is further ordered, adjudged, and decreed that the United States do have and recover costs of seizure and storage and court costs herein, or Commercial Credit Company, Inc., principal, and United States Fidelity & Guaranty Company, sureties.

It is further ordered and decreed that a certified copy of this judgment be delivered to the United States marshal at Houston, Texas, and to the collector of customs, San Antonio, Texas.

J. C. HUTCHESON, Jr., *Judge.*

O. K. as to form.

DALLAS C. BIGGERS.
ROY W. MCDONALD.

21

In United States District Court

No. 413, law, Laredo Division

UNITED STATES *versus* ONE FARGO TRUCK

No. 197, law, Corpus Christi Division

UNITED STATES *versus* ONE DE SOTO COUPÉ

No. 199, law, Corpus Christi Division

UNITED STATES *versus* ONE DE SOTO COUPÉ

Stipulation as to consolidation

Filed Febry. 26, 1931

It is hereby stipulated by and between counsel for the United States of America, libelant, and Commercial Credit Company, Inc., a corporation, intervener and claimant, subject to the approval of the court as follows:

I

That the above styled and numbered three cases pending in the District Court of the United States for the Southern District of Texas shall be consolidated after judgment, and that they shall be consolidated in a joint appeal, and that such appeal shall proceed in this court and in the Circuit Court of Appeals for the Fifth Circuit and in the Supreme Court of the United States under the
22 style of "United States versus One De Soto Coupé (Seized from T. W. Lewis)," being No. 199, law, Corpus Christi Division, upon the docket of this court.

II

That in the printing of the transcript on appeal herein the titl of the court and the title of the cause and the captions of the plead ings may be indicated thus, (title of court and cause), and need no be printed in full and that the indorsement on such papers, or docu ments, except filing indorsements, may also be omitted.

III

That in the printing of the transcript on appeal herein the record of the three consolidated cases may be printed in a single binder properly divided so as to show which cause the particular proceed ings relate to, and that in such printed record this stipulation shal be printed but once at the conclusion of such record.

IV

That in lieu of bill of exceptions and statement of facts the appea in all of the above styled and numbered causes shall be predicated upon the findings of fact and conclusions of law of the honorable J. C. Hutcheson, jr., judge of the District Court of the United States for the Southern District of Texas as approved and filed in this cause.

V

It is further stipulated that prior to the rendition of judg
23 ment in all of the above styled and numbered causes the Commercial Credit Company, Inc., intervener, made two motions for judgment, the first motion being that the libel should be dismissed and judgment should be rendered for the respondent auto mobile and for the interveners and that all costs should be ren dered against the libelant; the second, that the lien of the intervener should be recognized as a bona fide lien, created in good faith with out knowledge that such automobile was being used, or would be used, in violation of any Federal or State law, and that the re spondent automobile, if forfeited, should be forfeited in a decree which would recognize such lien, and provide for the payment of such lien from the proceeds of the sale after payment of all costs of court, storage costs, and other costs of this proceeding.

VI

It is further stipulated that prior to the rendition of judgment in each of the above causes the United States of America, libelant, filed its motion for judgment, asking that the respondent automobile be forfeited under the tariff act and that all costs be adjudged against the claimant intervener.

VII

It is stipulated that such motions in all of the above styled and numbered cause may be omitted from the printed docket and that this stipulation shall take the place of the printing of such motions in full.

H. M. HOLDEN,
United States Attorney.
By M. S. MCCORQUODALE,
Assistant.
DALLAS C. BIGGERS,
ROY W. MCDONALD,
Attorney for Intervener.

24 In United States District Court

No. 413, law, Laredo Division

UNITED STATES *versus* ONE FARGO TRUCK

No. 197, law, Corpus Christi Division

UNITED STATES *versus* ONE DE SOTO COUPÉ

No. 199, law, Corpus Christi Division

UNITED STATES *versus* ONE DE SOTO COUPÉ

Stipulation as to sale of property

Filed March 9, 1931

It is hereby stipulated by and between counsel for the United States of America, libelant, and Commercial Credit Company, Inc., a corporation, intervener and claimant, subject to the approval of the court as follows:

That in the cause of United States v. One Fargo Truck, No. 413, law, Laredo Division; United States v. one De Soto Coupé, No. 197, law, Corpus Christi Division; United States v. One De Soto Coupé, No. 199, law, Corpus Christi Division, the proceeds from the sale of the automobiles forfeited by the decrees of the court in such cases shall be paid into the registry of the court and held to await
25 the final outcome of the appeals in each of such causes, and that such proceeds shall stand in lieu of each of such automobiles.

H. M. HOLDEN,
United States Attorney,
By M. S. MCCORQUODALE,
Assistant.
DALLAS C. BIGGERS,
ROY W. MCDONALD,
Attorneys for Intervener.

In United States District Court

No. 199, law

UNITED STATES OF AMERICA, LIBELANT

vs.

ONE DE SOTO COUPÉ (SEIZED FROM T. W. LEWIS)

Petition for appeal

Filed February 26, 1931

To the honorable J. C. HUTCHESON, Jr.,
Judge of the Above-Entitled Court.

Now comes Commercial Credit Company, Inc., intervener herein by its attorneys, Dallas C. Biggers and Roy W. McDonald, and feeling itself aggrieved by the final decree of the United States District Court for the Southern District of Texas, Corpus Christi Division entered in this action, hereby prays that an appeal may be allowed from the said decree to the United States Circuit Court of Appeals for the Fifth Circuit, and in connection with this petition petitioner hereby presents its assignments of error,

Petitioner further prays that such order of supersedeas issue as shall be proper in the premises.

DALLAS C. BIGGERS,
ROY W. MCDONALD,
Attorneys for Intervener.

26 In United States District Court

No. 413, law, Laredo Division

UNITED STATES *versus* ONE FARGO TRUCK

No. 197, law, Corpus Christi Division

UNITED STATES *versus* ONE DE SOTO COUPÉ

No. 199, law, Corpus Christi Division

UNITED STATES *versus* ONE DE SOTO COUPÉ

Order granting appeal

Filed March 9, 1931

This the 5th day of March, 1931, came the Commercial Credit Company, Inc., a corporation, intervener and claimant, by its attor

ney, and came the United States of America, libelant, by its attorney, and filed in the above styled and numbered causes petitions praying for the allowance of appeals in each cause, and assignments of error intended to be urged by it in each cause, and a petition for the consolidation of such causes upon appeal; and it appearing to the court by the stipulation of counsel for the United States of America, libelant, and Commercial Credit Company, Inc., intervener and claimant, that the issues in all such causes are the same, and that it will be in the interests of justice and economy to consolidate such causes,

27 It is accordingly ordered, adjudged, and decreed hereby that the cases of United States versus One De Soto Coupé (seized from T. W. Lewis), being No. 199, law, Corpus Christi Division, upon the docket of this court; and United States versus One De Sota Coupé (seized from A. D. Young), being No. 197, law, Corpus Christi Division, upon the docket of this court; and United States versus One Fargo Truck, No. 413, law, Laredo Division, upon the docket of this court, be and the same are hereby consolidated for the purposes of appeal, and that such appeal shall proceed in this court and in the Circuit Court of Appeals for the Fifth Circuit and in the Supreme Court of the United States under the style of "United States versus One De Soto Coupé (seized from T. W. Lewis)," being No. 199, law, Corpus Christi Division, upon the docket of this court.

On the consideration of the petitions for appeal and the assignments of error, the court does allow the appeals in each of the above styled and numbered causes to be prosecuted in the Circuit Court of Appeals for the Fifth Circuit and in the Supreme Court of the United States, as a single proceeding under the style above stated, and that a transcript of the record in the consolidated cause, which shall include the proceedings and papers in each of the above-styled causes designated by the præcipes of the respective parties, properly authenticated, shall be sent to the Circuit Court of Appeals for the Fifth Circuit.

On consideration the court further fixes the amount of the cost bonds in this cause at five hundred ($500.00) dollars, and directs the filing of such a bond in each cause. On consideration the court further orders that this allowance of appeal shall operate to

28 grant the petition for appeal in each of the above styled and numbered causes, and copies thereof shall be filed and entered upon the minutes of the court in each cause, but only one copy thereof shall be included in transcript presented to the Circuit Court of Appeals for the Fifth Circuit.

T. M. KENNERLY, *Judge.*

In United States District Court

No. 199, law

UNITED STATES OF AMERICA, LIBELANT

vs.

ONE DE SOTO COUPÉ (SEIZED FROM T. W. LEWIS)

Assignments of error

Filed February 26, 1931

Comes now Commercial Credit Company, Inc., intervener herein, and excepts to the action of the trial court and assigns as error the following on which it will rely upon prosecution of its appeal herein.

I

That the honorable court erred in its conclusions of law in that it concluded that the respondent automobile herein should be forfeited to the United States of America for a violation of the tariff act of 1930.

II

That the honorable court erred in that in its conclusions of law it concluded that the United States of America should recover from the intervener and claimant, Commercial Credit Company, Inc., and its surety, its costs of suit herein incurred and its storage and warehouse charges incurred since the date of seizure.

29

III

That the honorable court erred in its decree entered herein in that said decree ordered, adjudged, and decreed that the claim of the intervener to the property or the proceeds thereof should be denied, and that the forfeiture should be made absolute against the intervener, and that said decree and all thereof was contrary to law and should have been rendered in favor of Commercial Credit Company, Inc., the intervener.

IV

The honorable District Court erred in failing to dismiss the libel of information and in awarding judgment of forfeiture and condemnation against the automobile involved.

V

The court erred in holding that the Government of the United States might proceed under the tariff act of the United States revenue act for the condemnation and forfeiture of the De Soto coupé automobile involved in this proceeding after the evidence showed that such automobile had been discovered and seized while being used to transport intoxicating liquor.

VI

The honorable District Court erred in holding that it was not mandatory for the Government to have proceeded under section 26 of the prohibition act if it desired to condemn and forfeit said automobile.

30 The court should have held that it was mandatory on the Government of the United States, if it desired to condemn and forfeit said automobile, to proceed under section 26 of the prohibition act.

VII

The court erred in failing to dismiss said libel and in failing to award the possession of said automobile to the intervener, Commercial Credit Company, Inc., as an innocent lienor or owner of the title to said automobile.

Wherefore, intervener prays that the decree herein be reversed, and that the above-entitled court be ordered to proceed to forfeit the respondent automobile under the terms of the national prohibition act, or for such orders as appellant may be entitled to.

Dated this 19th day of February, 1931.

DALLAS C. BIGGERS,
ROY W. McDONALD,
Attorneys for Intervenor.

We hereby certify that the foregoing assignments of error are made on behalf of the intervener herein for an appeal, and it is our opinion, and the same now constitutes an assignment of errors upon the appeal prayed for.

DALLAS C. BIGGERS,
ROY W. McDONALD,
Attorneys for Intervener.

31 [Bond on appeal for $500.00 approved and filed March 17, 1931; omitted in printing.]

32 [Omitted.]

33 In United States District Court for the Southern District of Texas, Laredo Division

Number 413, law

UNITED STATES OF AMERICA, LIBELANT

versus

ONE FARGO TRUCK, RESPONDENT

AND

COMMERCIAL CREDIT COMPANY, INC., A CORPORATION, INTERVENER-respondent

Præcipe and acceptance of service

Filed March 14, 1931

You are hereby notified to prepare and certify copies of such papers filed and all such proceedings had in the above-entitled action as are necessary to the determination of the cause on appeal and in particular the following instruments:

1. Libel.
2. Answer and motion in intervention of Commercial Credit Company, Inc.
3. Finding of fact and conclusions of law.

3a. Waiver of jury.

34 4. Decree of court.

5. Opinion of court.
6. Stipulations as to consolidation, etc.
7. Stipulation as to sale of property.
8. Petition for appeal.
9. Order consolidating and allowing appeal.
10. Assignments of error.
11. Appeal bond.
12. Citation and acceptance of service.
13. Præcipe and acceptance of service.
14. Certificate.

DALLAS C. BIGGERS,
ROY W. MCDONALD,
Attorneys for Appellant.

Receipt of a copy of the above præcipe is acknowledged and service of the same is hereby accepted this 9th day of March, A. D. 1931.

H. M. HOLDEN,
United States Attorney.
M. S. MCCORQUODALE,
Assistant United States Attorney.

35 In United States District Court

Law No. 413

UNITED STATES OF AMERICA

vs.

ONE FARGO TRUCK AND ONE LOT OF INTOXICATING LIQUOR (SEIZED from John Paul Brazil)

Libel

Filed April 18, 1930

To honorable J. C. HUTCHESON, JR.,

Judge of said Court:

Now comes the United States of America, by H. M. Holden, United States attorney for the Southern District of Texas, and files this its libel of information against one Fargo truck, license No. 39-547, motor No. B-KT-3896, serial No. 284425, and one lot of intoxicating liquor (seized from John Paul Brazil), and for cause of forfeiture would show that said automobile and liquor was seized by John C. Chamberlain, a customs officer of the United States, on or about March 20, 1930, in Webb County, Texas, and is now in possession of customs officers of the United States as a result of the seizure of said automobile, while there was being concealed and transported therein, thirty-nine five-gallon cans of Mexican alcohol and four hundred and seventy-three pint bottles of Mexican whisky, which has lately theretofore been unlawfully imported into the United States.

That on or about the 7th day of April, A. D. 1930, Commercial Credit Company, Inc., of Dallas, Dallas County, Texas, as principal, and United States Fidelity & Guaranty Company of Baltimore, Maryland, as sureties, did bind themselves to the United States in the sum of two hundred and fifty ($250.00) dollars, in the event of the condemnation of said automobile, to pay to the
36 United States all of the costs and expenses of the proceedings to obtain such condemnation; that by virtue of the premises such principal and sureties are bound and liable to pay to the United States the costs and expenses of this cause.

Wherefore, said United States attorney, on behalf of the United States of America, prays that monition issue in accordance with the usual procedure of this court, and that citation be issued and served on the above principal and sureties; that warrant of seizure issue to the marshal for the Southern District of Texas, commanding him to seize said automobile, and that judgment of forfeiture be decreed against said automobile, and that plaintiff do have and recover its costs and expenses in this cause from the said Commercial Credit Company, Inc., of Dallas, Texas, and United States Fidelity & Guaranty Company of Baltimore, Maryland.

H. M. HOLDEN,
United States Attorney.

In United States District Court

At Law No. 413

UNITED STATES OF AMERICA

vs.

ONE FARGO TRUCK AND ONE LOT OF INTOXICATING LIQUOR

Petition of intervention and motion to dismiss of Commercial Credit Co., Inc.

To the honorable J. C. HUTCHESON, Jr.,
Judge of said Court:

Now comes the Commercial Credit Co., Inc., hereinafter referred to as intervener, and in answer to the citation heretofore served
37 upon it as principal upon the cost bond filed herein, respectfully moves the court to dismiss this proceeding in libel for want of jurisdiction, and would respectfully show:

1

Intervener respectfully shows that it is a corporation organized under the laws of the State of Texas, engaged in the automobile finance business, with an office at Dallas, Texas; that on or about January 8th, 1930, the Perry Motor Company, at Dallas, Texas, a reputable automobile dealer, sold and delivered to one Albert Jackson, 4103 Roseland Avenue, Dallas, Texas, one Fargo truck, motor No. 3886, serial No. W–307–YS, under a chattel-mortgage contract, a true and correct copy of which is attached hereto as Exhibit A and here referred to and made a part hereof as though copied here in full; that the purchaser paid four hundred and sixty dollars cash and executed one promissory note for the balance of one thousand and sixteen and 76/100 dollars, payable in twelve equaly [equal] monthly payments; that such chattel mortgage and promissory note were duly assigned to and purchased by your intervener on or about January 8th, 1930, in the regular course of its automobile financing business, and the same are now owned and held by your intervener in its own right; that thereafter default occurred in the payment of such note and there is now past due and unpaid to your intervener under the chattel-mortgage contract attached hereto and on the note the full sum of eight hundred and forty-seven and 30/100 ($847.30) dollars; that by the terms of such contract your intervener has declared the entire balance immediately due and payable, and it is now and has been since the time of default entitled to the immediate possession of the above-described truck.

38

2

Intervener further shows that prior to such assignment a careful investigation was made as to the character, reputation, and financial standing of the purchaser by reputable credit agencies, and a careful and thorough investigation was made of his record; that your intervener carefully investigated such contract and was unable to ascertain any facts which would put it upon notice of any liquor hazard or which would give rise to any suspicion that the said Albert Jackson might use the property in violation of law.

3

Intervener would further show that on or about the 10th day of March, 1930, the above-described automobile was seized by Federal officials near Laredo, Texas, and it is alleged that at the time it contained a quantity of alleged intoxicating liquors which are described in the petition for libel.

Your intervener is further informed that the said automobile is now in the hands of the United States marshal at Laredo, Texas.

4

Intervener would respectfully show to the court that at the time of the alleged seizure of such automobile and liquor, and immediately prior thereto, the automobile had been moving; that it had been moving for many miles before it was seized by the officials; that the driver was present and in said automobile at the time of the seizure and immediately prior to it; that such driver at the time of the seizure, if violating the law at all, which this intervener does not know, was engaged in the illegal transportation of liquor

39 in violation of the terms of the national prohibition act; that at the time of such seizure the said truck was stopped by Federal officials and was searched in accordance with the provisions of the prohibition statutes; that the acts of the driver from the time that the truck first came under the observation of the Federal officials until the time of the stopping thereof, search and seizure of the contents thereof, was simply to drive the truck from the point of first observation to the point of the seizure and that the illegal acts committed by the driver constituted a violation of the national prohibition act and that such truck was not at the time of seizure nor at any time prior thereto being used for the purpose of concealing intoxicating liquors which had been unlawfully imported into the United States, but was being used for the purpose of unlawfully transporting intoxicating liquors within the United States and was therefore being used in violation of the national prohibition act only.

Wherefore your intervener respectfully shows to the court that it has no jurisdiction to forfeit the above-described automobile under the terms of the tariff act of the United States of America;

that the sole and exclusive jurisdiction in this court is to forfeit said automobile under the terms of the prohibition act; that prohibition act with reference to the forfeiture of automobiles supplants and supersedes the terms of the tariff act with respect automobiles which are seized while being used for the wrong transportation of liquor; that this libel proceeding is brought un the customs act without authority and without jurisdiction.

Wherefore your intervener respectfully moves that on fi
40 hearing hereof the libel proceeding herein instituted agai the above-described automobile and liquor be in all thi dismissed at the cost of the plaintiff and that the district attorn be instructed to proceed with forfeiture of the above-described pr erty under the terms of the national prohibition act.

DALLAS C. BIGGERS,
ROY W. MCDONALD,
Attorneys for Intervener

[*Duly sworn to by Roy W. McDonald; jurat omitted in printin*

41 In United States District Court

Law No. 413

UNITED STATES OF AMERICA
vs.
ONE FARGO TRUCK

Findings of fact and conclusions of law

Filed February 7, 1931

I

That on or about March 20, 1930, Roy Campbell was and i collector of customs of the United States at San Antonio, Texas, a that Laredo is a port of entry within his district.

II

That on or about the 20th day of March, 1930, near the city Laredo, county of Webb, and within the Laredo Division of t Southern District of Texas, one John C. Chamberlain, sr., a custo inspector of the United States, seized a certain Fargo truck, lice No. 39547, motor No. B-K.T-3886, being the same automobile as the respondent in the above named libel, and delivered said au mobile to the deputy collector of customs at Laredo, Texas, w retained same in custody, acting for the collector of customs.

Exhibit to supplement motion to dismiss

CHATTEL MORTGAGE

Know All Men by These Presents, that Albert Jackson of Dallas (Mortgagor's Town)

County of Dallas State of Texas party of first part, mortgagor, being justly indebted to

Good Street Motor Co. of Dallas (Mortgagee's Town) County of Dallas State of Texas

party of the second part, mortgagee, in the sum of One Thousand Sixteen & 76/100 Dollars ($1016.76)

(Amount owing in words here)

The said being the unpaid part of the purchase price of Fourteen Hundred Seventy two & 76/100 Dollars ($1472.76)

(Purchase price in words here)

for the purchase of the following described property, which is hereby conveyed and acknowledged (and which indebtedness, together with interest thereon, mortgagor promises to pay), for the purpose of securing payment of said note and interest, and in consideration of the sum of One Dollar ($1.00), the receipt whereof is hereby acknowledged, has granted, bargained, sold, transferred and mortgaged, and by these presents does grant, bargain, sell, transfer and mortgage unto said mortgagee the following described goods, chattels and personal property, to-wit:

Make	Motor No.	Body	Type	Model	Year	Tires	Size	Other Equipment	Cash Selling Price Including Taxes
Fargo	W20718	3586	Truck	1930			6		

together with all attached chattel attachments and equipment, which said personal property is to remain in the possession of said mortgagor until default of this mortgage shall occur, when said mortgagee may take possession of said chattels, said debt and said security pass and secure, and the conditions of this mortgage are fulfilled, this shall release mortgagor's note to be free and clear from any and all encumbrances.

TO HAVE AND TO HOLD the same, unto said mortgagee, and mortgagee's heirs, personal representatives, successors and assigns forever.

Provided always and these presents are upon the express condition, that if said mortgagor shall well and truly pay or cause to be paid to said mortgagee, said sum above mentioned, with interest thereon, in accordance with the terms of his certain promissory note bearing even date herewith, signed by said mortgagor, payable to said mortgagee or order in April 24th, 1931 and thereafter monthly installments of $ 84.73 each, the last of the installments of the respective dates, payable at the office of Commercial Credit Company, Inc. Dallas, Texas with interest thereon at the highest lawful rate per annum after maturity, and any renewals of the same, or any part thereof, and shall promptly and faithfully perform each and every the covenants, stipulations and agreements herein contained to be performed, then this instrument shall be void, otherwise to remain in full force and effect. It is agreed that said note may be detached for collection purposes.

Said mortgagor further promises that he will keep said goods and chattels with reasonable care, [illegible] and will not attempt to conceal them, or any thereof, from the mortgagee and other officers, and will not permit the same to be damaged, injured or depreciated, and will not attempt to sell, assign or dispose of said goods and chattels, or any interest therein, or remove or permit the same to be removed from the county wherein he resides, or garnish, without the written consent of said mortgagee, and will not encumber or permit any encumbrance or lien of any character whatsoever against the same; and that [illegible] that may be levied against said goods and chattels, this instrument or the indebtedness hereby secured.

Mortgagor covenants that he will not use or cause or permit to be used the [illegible] for [illegible] contrary to the laws of this State, or any other State, for personal or commercial use, prohibited by any Federal or State statute to be transported, and it is hereby [illegible] that the [illegible] described be used for such purpose or any other unlawful purpose, it shall be considered as a default under the mortgage, whether or not there shall be a default under any other terms or conditions thereof, which shall entitle the holder hereof to immediate [illegible] by reason of the [illegible] described.

[illegible] said goods and chattels until fully paid against loss by fire and theft for not [illegible] shall be liable to and pay the [illegible] of mortgagee, and [illegible] part [illegible] of any character.

[illegible] said [illegible] or [illegible] said goods or chattels to be [illegible] injured or [illegible] and [illegible] of [illegible] and [illegible]

UNITED STATES VS. COMMERCIAL CREDIT CO., INC.

known brand of whiskey which is distilled in Juarez, Mexico, and were labeled "American whiskey,"

IF INDIVIDUAL OR PARTNERSHIP MAKE ACKNOWLEDGMENT HERE

CHATTEL MORTGAGE

State of Texas

County of _____

I, _____ (Name of Acknowledging Officer) _____ (Official Capacity) in and for the State and County aforesaid, do hereby certify that the within instrument of writing from _____ (Name of Buyer—Mortgagor) to _____ (Name of Dealer—Mortgagee) was duly acknowledged before me on the _____ day of _____, A. D. 19____, by the said _____ (Name of Buyer—Mortgagor) and delivered by him as his act and deed.

Party of the second part, mortgagee herein, has paid to the party of the first part, mortgagor herein, the sum of _____ (Amount owing in words and figures) Dollars, the receipt of which is hereby acknowledged, and the party of the first part hereby releases and discharges the party of the second part from the payment of the same and from the lien of this mortgage.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal of office this _____ day of _____, A. D. 19____.

_____ (Official Capacity)

IF BUYER A CORPORATION, AN OFFICER SHOULD MAKE ACKNOWLEDGMENT HERE

State of Texas

County of _____ ss:

I, _____ (Name of Acknowledging Officer) _____ (Official Capacity) Notary Public, County of _____, State of Texas, do hereby certify that _____ (Name of Buyer—Mortgagor) a corporation, by _____ (Name of Officer of Corporation) its _____ (Office Held in Corporation) signed the within instrument of writing for the purposes and consideration therein expressed, and in the capacity therein stated, and as the act and deed of said corporation.

Given under my hand and seal of office this _____ day of _____, A. D. 19____.

_____ (Official Capacity)

THE STATE OF TEXAS vs. COMMERCIAL CREDIT CO., INC.

III

That at the time the said respondent automobile was seized, as aforesaid, there was deposited therein certain merchandise, to wit, thirty-nine (39) five-gallon cans of alcohol and four hundred and seventy-three (473) pints of distilled spirits; that the said distilled spirits were fit and intended for beverage purposes, and then and there contained more than one-half of one per cent of alcohol, by volume; that there was due upon the said merchandise certain taxes imposed by the tariff act of 1922; that at the time when the said merchandise was deposited in said truck, as aforesaid, the tariff due thereon was unpaid and still remains unpaid; that there were no marks, stamps, or labels on the said bottles or containers to indicate that said duties due thereon had been paid; that said merchandise had lately theretofore been imported into the United States contrary to law and without being declared to customs officers of the United States.

IV

That the facts of the seizure are as follows:

Border Patrol Inspectors L. D. Knesek and John Chamberlain, jr., stopped the above-described truck about 5.30 o'clock in the morning of March 20, 1930; said truck was stopped on a public highway in Webb County, known as the Mines Road, a road which leads from the mines which are located on the bank of the Rio Grande about twenty-two miles from Laredo, Texas. The point of seizure is about one mile from the Rio Grande and several miles from the mines. At the time the truck was stopped by the border patrol inspectors it was being driven by John Paul Brazil. Knesek held the driver of the truck while John Chamberlain, jr., went to summon John Chamberlain, sr.; John Chamberlain, sr., a United States customs inspector, went to the scene of seizure and searched the truck. He found therein thirty-nine cases of alcohol and four hundred seventy-three bottles of whiskey. The alcohol was five-gallon cans and the cans were stamped and labeled "Victoria" alcohol. Victoria alcohol is manufactured in Las Mochas, Sinoloa, Mexico. The cans were embossed with the name of the manufacturer and the cases also marked with the label of the manufacturer of Victoria alcohol. The labels and stamps were genuine labels and stamps of the company which manufactures Victoria alcohol in the State of Sinoloa, Mexico. There were no revenue stamps attached to the containers of the alcohol, and it was imported into the United States contrary to law, without payment of duty thereon and without being declared to United States customs officers. The bottles of liquor bore genuine labels of a brewery located in Juarez, Mexico, and were labeled "American whiskey," a well-known brand of whiskey which is distilled in Jaurez, Mexico.

The containers of the whiskey bore no revenue stamps of the United States, and said whiskey was imported into the United States contrary to law, without the payment of duty thereon and without being declared to United States customs officers. Numerous seizures of smuggled liquor have been made upon the Mines Road and its vicinity during the last ten years and in no instance did any of the seizures involve domestic liquor so far as is known. In many of these cases the defendants have plead guilty to violation of the customs laws and admitted that the liquor was smuggled, and the liquor seized in all cases bore labels and stamps indicating that they were of Mexican manufacture. The customs officers have discovered no instance in which domestic liquor has been seized in this vicinity with foreign labels on it. The above described truck was being driven along the Mines Road by John Paul Brazil with the smuggled alcohol and liquor on it at the time the truck was stopped by the border patrol inspectors.

V

That the Commercial Credit Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Texas.

44 VI

That on the 8th day of January, 1930, one Albert Jackson purchased from the Perry Motor Company, of Dallas, Texas, a reputable automobile dealer, the above-described automobile under a chattel-mortgage contract of sale, pursuant to which said dealer retainer a purchase-money lien upon such car until the purchase price thereof should have been fully paid; that at the time of said sale said corporation required and secured a credit statement from said purchaser, in which said purchaser alleged that he was engaged in the transfer business on his own account, that such purchaser gave credit references and information in accordance with the customary course of the dealer's business; that thereafter such note and mortgage were, for a valuable consideration, sold to the Commercial Credit Company, Inc., and it is the owner and holder of a valid lien upon such automobile, on which there is at this time and unpaid balance of eight hundred and forty-seven and 30/100 ($847.30) dollars.

VII

That such lien is a purchase-money chattel-mortgage lien and is bona fide; that it was created by the leader in good faith, without any knowledge of any facts which would put the dealer upon notice that such truck might be used in violation of any laws of the State

of Texas or of the United States; that such lien contained a covenant that the purchaser would not use the automobile in violation of any Federal or State statute with reference to intoxicating liquor; that the Commercial Credit Company, Inc., acted in good faith in buying such chattel-mortgage lien; that it had no knowledge of any facts indicating or tending to indicate that the purchaser
45 would use such truck in violation of any Federal or State statute; that the seizure in this case was incurred without willful negligence or without any intention on the part of the Commercial Credit Company, Inc., to defraud the revenue or to violate the law.

VIII

That Commercial Credit Company, Inc., claimant herein, had no notice that said automobile was being used for illegal purposes and knew of no facts or circumstances which would reasonably or otherwise lead them to believe that the automobile was being so used; that the Commercial Credit Company, Inc., is now the legal owner of the chattel mortgage upon said Fargo truck; that no payment have been made under the aforementioned chattel-mortgage contract since the 20th day of March, 1930; that the Commercial Credit Company, Inc., is under the terms of such chattel mortgage entitled to the immediate and exclusive possession of said automobile except for the claims of the Government as herein asserted.

From the foregoing facts the court finds as conclusions of law:

I

That the above-named vehicle should be forfeited to the United States of America because smuggled merchandise was seized on said vehicle.

II

That the libelant, United States of America, should recover from the intervener and claimant, Commercial Credit Company,
46 Inc., and the United States Fidelity and Guaranty Company, its surety, the costs of suit, and the storage and warehouse charges properly incurred since the date of seizure.

III

That the claim of the intervener to the property or the proceeds thereof shall be denied and the forfeiture shall be made absolute against the Commercial Credit Company, Inc.

J. C. HUTCHESON, Jr., *Judge.*

In United States District Court

Law No. 413

UNITED STATES OF AMERICA,

vs.

FARGO TRUCK

Waiver of jury

Filed Nov. 17, 1930

It is hereby agreed and stipulated between the parties herein that trial by jury is waived.

M. S. MCCORQUODALE,
Assistant United States Attorney,
Attorney for Plaintiff.
DALLAS C. BIGGERS,
ROY W. MCDONALD,
Attorney for Intervener.

47 In United States District Court

Law No. 413

UNITED STATES OF AMERICA

vs.

ONE FARGO TRUCK

Opinion of court

Filed January 5, 1931

This proceeding is brought for the forfeiture of a certain truck which when seized had in it thirty-nine cases of alcohol and four hundred and seventy-three bottles of whiskey. The facts as to the place where and the circumstances under which the seizures occurred are as follows:

Two patrol inspectors for the United States Immigration Service, while patrolling one of the main highways in Webb County, Texas, known as the Mines Road, in their search for aliens unlawfully entering the United States, saw the truck in question coming down the road and stopped it to investigate whether it had aliens aboard. The driver, John Paul Brazil, told them that he had a load of liquor. The officers made neither search nor seizure of the car but directed

the driver to wait until the customs inspector, John Chamberlain, could be summoned.

Upon his arrival he searched the car, and finding, as he believed, intoxicating liquors of foreign manufacture therein, the truck and liquors were seized, delivered to the customs office in Laredo, and thereafter proceedings were taken against the driver and against the car under the customs acts. The intervener, Commercial Credit Co., Inc., set up a bona fide lien upon the truck, moved for a dismissal of the libel, and in the alternative for judgment recognizing its lien as a valid claim against the proceeds of the sale.

Upon the trial the intervener established that it was a bona
48 fide lienor, and sought to protect its lien by the claims (1) that no reasonable ground for the seizure existed; (2) that there was no sufficient proof that the liquors were of foreign manufacture, and had been unlawfully smuggled into the United States; and (3) that at all events the liens should be protected because, as they insist, sec. 26, Title II, of the national prohibition act has superseded the customs laws in all cases of the transportation of intoxicating liquors, whether smuggled or otherwise, and has made it mandatory upon the seizing officer to proceed under that section with the adequate protection provided in it for bona fide lienors.

As to the first point it is sufficient to say that no constitutional rights of the intervener were invaded by the search in question, and intervener has no standing to raise it. (United States vs. One Buick Automobile, 21 Fed. (2nd) 789; Cantrell vs. United States, 15 Fed. (2nd) 953; Graham vs. United States, 15 Fed. (2nd) 740; Van Dam vs. United States, Fed. (2nd) 234.)

As to the second point it is sufficient to say that the evidence as to the character of the liquor, the place where and the manner in which it was obtained, and the circumstances under which the seizure was made abundantly support the Government's contention that it was smuggled liquor (Tomplain vs. United States, 42 Fed. (2nd) 203; Carroll vs. United States 267 U. S. 132), to say nothing of the conviction of the defendant on the criminal charge (United States vs. One Ford, 21 Fed. (2nd) 628).

The third point as to the law applicable to the forfeiture presents the serious and difficult question in the case.

In United States vs. One Ford (292 Fed. 267), this court made an attempt to examine the state of the law on the point, and then reached the conclusion upon the grounds there set out that the customs laws applied.

49 I am not unmindful of the struggle which has since the time of that decision been waged between the Government and the automobile industry over the efforts of the Government to apply sec. 3450, with its rigorous forfeitures, rather than sec. 26, with its protection of bona fide lienors, and in United States vs. One Buick

Automobile (39 Fed. (2nd) 107) this court has undertaken to outline and to walk the narrow path made by that conflict.

It is now contended that the case of Richbourg Motor Co. vs. United States (281 U. S. 528) had the effect not only to settle the issue on conflict in favor of the industry as between sec. 3450 and sec. 26 of the national prohibition act, but also the broader effect of declaring sec. 26 applicable in cases of customs seizures as well, and to require forfeitures under that section with court protection of a bona fide lienor rather than under the customs sections with the administrative protection there provided.

While in the light of some of the expressions in the Richbourg case as to the purpose and intent of the Congress in enacting sec. 26 and as to its mandatory character in all cases where the transportation of intoxicating liquors is involved, I cannot say that the law is free from doubt, or that what the Supreme Court will say when the point is before it is foreshadowed, it is yet entirely plain to me that the Supreme Court did not in the Richbourg case have the matter of the customs statutes before it, and that that case is not authority for the position taken by the intervener here.

Nor, though I do believe it would be the duty of the court wherever possible to give effect to the intention of Congress to give protection to a bona fide lienor in an industry affecting as many people as the automobile industry does (United States vs. One Paige Automobile, 277 Fed. 524; United States vs. One Ford, 292 Fed. 209; United States vs. One Buick Automobile, 39 Fed. (2nd) 107), can I find any warrant in the present state of the law for the view pressed here by intervener, that because of the mandatory language of sec. 26 it shall be held to have superseded and displaced in all cases where liquor is concerned the equally mandatory language in the customs law, with their elaborate provisions for administrative seizures and forfeitures in small-value cases, and for judicial forfeiture and later administrative remissions in matters of larger value.

It seems to me where a car is found with smuggled liquor in it the Government has the option, in the present state of the law, to proceed under the customs or the prohibition statutes in the forfeiture of the cars as it is advised, and this wholly independent of the proceedings taken in, or in the course of, the criminal case.

So believing, the claim of the intervener will be denied and the Government's forfeiture will be made absolute.

Houston, Texas, December 31, 1930.

J. C. HUTCHESON, Jr., *Judge.*

In United States District Court

Law No. 413.

UNITED STATES OF AMERICA

vs.

ONE FARGO TRUCK AND ONE LOT OF INTOXICATING LIQUOR (SEIZED from John Paul Brazil on 3–20–30)

Decree

Filed January 19, 1931

On this 16th day of January, A. D. 1931, came on to be heard the above styled and numbered cause, and it appearing to the court that the above-styled automobile, license #39–547, motor #B–
51 KT–3896, serial #284425, was seized while there was deposited and concealed therein certain foreign distilled liquor, which had lately theretofore been imported into the United States contrary to law; that libel was filed herein and monition duly published; and that no claim was filed herein except that of the Commercial Credit Company, Inc., of Dallas, Texas;

And it further appearing to the court that Commercial Credit Company, Inc., of Dallas, Texas, as principal, and United States Fidelity & Guaranty Company of Baltimore, Maryland, as sureties, did bind themselves to the United States in the sum of two hundred and fifty ($250.00) dollars, in the event of the condemnation and forfeiture of said automobile, to pay to the United States all of the costs and expenses of the proceedings to obtain such condemnation and forfeiture;

It is ordered, adjudged, and decreed that said automobile be, and the same is, hereby forfeited to the United States, and that intervener take nothing by reason of its intervention.

It is further ordered, adjudged, and decreed that said automobile be by the marshal sold as provided by law, and the proceeds of the sale be disposed of as provided by law.

It is further ordered, adjudged, and decreed that the United States do have and recover costs of seizure and storage and the court costs herein of Commercial Credit Company, Inc., principal, and United States Fidelity & Guaranty Company, as sureties.

It is further ordered and decreed that a certified copy of this
52 judgment be delivered to the United States marshal at Houston, Texas, and to the collector of customs, San Antonio, Texas.

J. C. HUTCHESON, Jr., *Judge.*

Stipulation as to sale of property, filed March 9, 1931, omitte from the printed record, as per stipulation of counsel copied page 1.

* * * * * * *

In the United States District Court

Law No. 413

UNITED STATES OF AMERICA, LIBELANT

vs.

ONE FARGO TRUCK

Petition for appeal

Filed February 14, 1931

To the honorable J. C. HUTCHESON, Jr.,

Judge of the Above-entitled Court:

Now comes Commercial Credit Company, Inc., intervener herein by its attorney, Dallas C. Biggers, and feeling itself aggrieved b the final decree entered in this action, hereby prays that an appea may be allowed, to wit, from the United States District Court fo the Southern District of Texas, Laredo Division, to the United State Circuit Court of Appeals for the Fifth Circuit, and in connectio with this petition petitioner hereby presents its assignments of erro

Petitioner further prays that such order of supersedeas issue a shall be proper in the premises.

DALLAS C. BIGGERS,
ROY W. MCDONALD,
Attorneys for Intervener.

53 In United States District Court

No. 413, law

UNITED STATES OF AMERICA, LIBELANT

vs.

ONE FARGO TRUCK

Assignments of error

Filed February 14, 1931

Comes now Commercial Credit Company, Inc., intervener herein by its attorneys, and alleges in its petition for appeal that in th record proceedings and in the final judgment of the above-entitle action material error has intervened to the substantial prejudice o the plaintiff, to wit:

I

That the honorable court erred in its conclusions of law in that it concluded that the respondent automobile herein should be forfeited to the United States of America for a violation of the tariff act of 1930.

II

That the honorable court erred in that in its conclusions of law it concluded that the United States of America should recover from the intervener and claimant, Commercial Credit Company, Inc., and its surety its costs of suit herein incurred and its storage and warehouse charged incurred since the date of seizure.

III

That the honorable court erred in its degree entered herein in that said decree ordered, adjudged, and decreed that the claim of the intervener to the property or the proceeds thereof should be
54 denied, and that the forfeiture should be made absolute against the intervener, and that said decree and all thereof was contrary to law and should have been rendered in favor of Commercial Credit Company, Inc., the intervener.

Wherefore, intervener prays that the decree herein be reversed, and that the above-entitled court be ordered to enter a decree declaring the above-named respondent automobile released to the intervener and dismissing the libel herein and adjudging said respondent automobile and/or the funds substituted in its place, if any, free from all claims, right, title, or interest of the libelant herein.

Dated this 10th day of February, 1931.

DALLAS C. BIGGERS,
ROY W. McDONALD,
Attorneys for Intervener.

We hereby certify that the foregoing assignments of error are made on behalf of the intervener herein for an appeal, and it is our opinion, and the same now constitutes an assignment of errors upon the appeal prayed for.

DALLAS C. BIGGERS,
ROY W. McDONALD,
Attorneys for Intervener.

Appeal bond, filed March 13, 1931, omitted from the printed record, as per stipulation of counsel copied at page 1.

* * * * * * *

55 In United States District Court for the Southern District of Texas, Corpus Christi Division

Number 197, law

UNITED STATES OF AMERICA, LIBELANT

versus

ONE DE SOTO COUPÉ, RESPONDENT

AND

COMMERCIAL CREDIT COMPANY, INC., A CORPORATION, INTERVENER-respondent

Præcipe for transcript

Filed March 17, 1931

You are hereby notified to prepare and certify copies of such papers filed and all such proceedings had in the above-entitled action as are necessary to the determination of the cause on appeal and in particular the following instruments:

1. Libel.
2. Answer and motion in intervention of Commercial Credit Company, Inc.
3. Findings of fact and conclusions of law.
3a. Waiver of jury.
4. Decree of court.
5. Stipulations as to consolidation, etc.

56 6. Stipulation as to sale of property.

7. Petition for appeal.
8. Order consolidating and allowing appeal.
9. Assignments of error.
10. Appeal bond.
11. Citation and acceptance of service.
12. Præcipe and acceptance of service.
13. Certificate.

DALLAS C. BIGGERS,
ROY W. MCDONALD,
Attorneys for Appellant.

Receipt of a copy of the above præcipe is acknowledged and service of the same is hereby accepted this 9th day of March, A. D. 1931.

H. M. HOLDEN,
United States Attorney.
M. S. MCCORQUODALE,
Assistant United States Attorney.

In United States District Court

Law No. 197

UNITED STATES OF AMERICA

vs.—

ONE DE SOTO COUPÉ, ETC. (SEIZED FROM A. D. YOUNG)

Libel

Filed October 20, 1930

To Honorable J. C. HUTCHESON, Jr.,
Judge of said court.

Now comes the United States of America, by H. M. Holden, United States attorney for the southern district of Texas, and files this its libel of information against one De Soto coupé, eight-
57 cylinder, license No. 629-390, engine No. CF-19475 (seized from A. D. Young), and for cause of forfeiture would show that said automobile was seized by W. W. Musgrave and E. B. McCulley, customs officers of the United States, on or about September 17, 1930, in Brooks County, Texas, and is now in possession of customs officers of the United States as a result of the seizure of said automobile, while there was being concealed and transported therein foreign distilled and foreign malt liquors which has lately theretofore been unlawfully imported into the United States.

That on or about the 15th day of October, A. D. 1930, Commercial Credit Company, of Dallas, Dallas County, Texas, as principal, and United States Fidelity and Guaranty Company, as sureties, did bind themselves to the United States in the sum of two hundred and fifty ($250.00) dollars, in the event of the condemnation of said automobile, to pay to the United States all of the costs and expenses of the proceedings to obtain such condemnation; that by virture of the premises such principal and sureties are bound and liable to pay to the United States the costs and expenses of this cause.

Wherefore, said United States attorney, on behalf of the United States of America, prays that monition issue in accordance with the usual procedure of this court, and that citation be issued and served on the above principal and sureties; that warrant of seizure issue to the marshal for the Southern District of Texas, commanding him to seize said automobile, and that judgment of forfeiture be decreed against said automobile and that plaintiff do have and recover its costs and expenses in this cause from the said Commercial Credit Company, Inc., of Dallas, Texas, and United States Fedelity and Guaranty Company.

H. M. HOLDEN,
United States Attorney.

58 In United States District Court

At law, No. 197

UNITED STATES OF AMERICA

vs.

ONE DE SOTO COUPE

Answer and motion to dismiss

Filed January 2, 1931

To the Honorable J. C. HUTCHESON, Jr.,
Judge of said Court.

Now comes the Commercial Credit Company, Inc., hereinafter called "claimant," and United States Fidelity and Guaranty Company, surety upon claimant's cost bond, and in answer to the citation herein file this their answer and motion to dismiss the above styled and numbered cause, and respectfully move the court to dismiss the libel proceedings herein, upon the grounds and the reasons therefor, as follows:

1

Claimant would respectfully show that it is a corporation organized under the laws of the State of Texas and engaged in the automobile finance business, with a branch office at Dallas, Texas; that on or about August 8th, 1930, the Perry Motor Company, of Dallas, Texas, a reputable automobile dealer, sold and delivered to one A. D. Young, Dallas, Texas, one De Soto coupé, motor No. 19495, serial No. L-172-YW, under a conditional sale contract, a true and correct copy of which is attached hereto as Exhibit A and here referred to and made a part hereof as though copied here in full; that the purchaser paid four hundred and twenty-five ($425.00) dollars in cash and trade-in allowance of the total purchase
59 price of twelve hundred and fifty-seven and 08/100 ($1257.08) dollars, and executed one promissory note for eight hundred and thirty-two and 08/100 ($832.08) dollars, payable in twelve equal monthly payments; that such conditional sales contract and promissory note were duly assigned to and purchased by your claimant on August 8th, 1930, in the regular course of its automobile financing business, and the same are now owned and held by your claimant in its own right; that thereafter default occurred in the payment of such note and there is now past due and unpaid to your claimant under the chattel-mortgage contract attached hereto and on the note the full sum of eight hundred and thirty-two and 08/100 ($832.08) dollars; that such chattel-mortgage contract provided in its terms that the purchaser covenanted that he would not use or cause or permit to be used the car therein described for the trans-

portation of any liquor for commercial or personal use prohibited by any Federal or State statute to be transported, and provided that should such car be used for such purpose or any unlawful purpose such improper use should be considered a default under the mortgage, entitling the holder of such mortgage, claimant herein, to immediate possession of such chattel; that under the terms of such contract your claimant has declared the entire balance immediately due and payable, and it is now and has been since the time of default entitled to the immediate possession of the above-described automobile.

2

Claimant further shows that neither the Perry Motor Company nor the claimant had any notice or knowledge that such automobile was being used or would be used in the violation of the national prohibition act or any other law; that neither the dealer, the original line holder, nor this claimant had notice of or knowledge of any facts that would indicate or tend to indicate that such automobile would be illegally used; that such lien was and is a bona fide lien created without any knowledge on the part of the lienor, the dealer, or this claimant that such property would be used illegally, and that a careful investigation was made as to the character, reputation, and financial standing of the purchaser by reputable credit agencies, and a careful and thorough investigation was made of his record; that your claimant and the dealer each and both carefully investigated such contract and did not learn any facts which would put them upon notice of any liquor hazard or which would give rise to any suspicion that the said A. D. Young might use the property in violation of law.

60

3

Claimant would further show that on the evening of the 17th day of September, 1930, the above-described automobile was seized by Federal officials near Falfurrias, Texas, and it is alleged in petitioner's libel that at such times it contained a quantity of alleged intoxicating liquors which are described in the petition for libel, which allegation the claimant does not know to be either true or false, and which allegation claimant demands to be proved.

4

Your claimant is further informed that the said automobile is now in the hands of the United States marshal at Corpus Christi, Texas.

5

Claimant would respectfully show to the court upon information and belief that at the time of the alleged seizure of such automobile and liquor, and for a long distance prior thereto, the automobile had been moving; that it had been in motion

61

Exhibit A to answer and motion to dismiss

CHATTEL MORTGAGE

IT IS ABSOLUTELY NECESSARY THAT THIS FORM BE FILLED IN COMPLETELY

Dallas, Texas. Date

Know All Men by These Presents: That A. D. Young Dallas

(Name of Buyer)

County of Dallas State of Texas party of first part, mortgagor, being justly indebted to

Perry Motors Dallas County of Dallas Texas

(Mortgagee) (Mortgagee's Town)

Party of the second part, mortgagee, in the sum of Eight Hundred thirty-two & 08/100 Dollars ($ 832.08),

the same being the unpaid part of the purchase price of Twelve hundred fifty-seven & 08/100 Dollars ($ 1257.08),

(Purchase price in words here)

evidenced by one certain promissory note of even date herewith, executed by party of the first part, payable to the order of party of the second part, as follows, to-wit: Twenty-four consecutive monthly instalments (and which indebtedness, together with interest thereon after maturity at the highest legal contract rate, the mortgagor agrees to pay), for the purpose of securing payment of said note and interest, and in consideration of the sum of One Dollar ($1.00), the receipt whereof is hereby acknowledged, has granted, bargained, sold, and by these presents does grant, bargain, sell and deliver and mortgage unto said mortgagee the following described goods, chattels and personal property, to wit: One Passenger Coach Closed Model Car or Tractor (hereinafter called "Car")

Make	Manufacturer's Number	Motor No.	Model	Year	New or Used	Type of Body & Trade Name (If Any)	Adv. H. P.	No. Cyl.	List Price f. o. b. Factory	Contracting Sales Price Including Extras
Ford	1172TR	10495	Coupe	1930	New					

complete with all standard catalog attachments and equipment, which said personal property is to remain in the possession of said mortgagor as long as the mortgagor shall duly and punctually perform all the terms of said mortgage, said note and said security note and notes, and the conditions of this mortgage are fulfilled; and said mortgagor warrants same to be free and clear from any and all encumbrances.

TO HAVE AND TO HOLD the same unto said mortgagee, said mortgagee's heirs, personal representatives, successors and assigns forever.

Provided always, and these presents are upon the express condition that if said mortgagor shall well and truly pay or cause to be paid to said mortgagee, said principal sum mentioned, with interest thereon, in accordance with the terms of his certain promissory note bearing even date herewith, signed by said mortgagor, payable to said mortgagee or order in 12 monthly instalments of $69.34 each and maturing on the same date each succeeding consecutive instalments, payable at the office of Southwestern Credit Corporation, Inc. Dallas, Texas with interest after maturity at the highest legal contract rate until paid, and any extension of the same, or any part thereof, with interest thereon at the highest legal contract rate, and shall promptly and faithfully perform each, all and every the covenants, stipulations and agreements herein contained on his part to be performed then this instrument shall be void, otherwise to remain in full force and effect. It is agreed that said note may be detached for collection purposes.

Said mortgagor further promises that he will not sell said goods and chattels with reasonable care, skill and caution, and keep same in good repair, without any fraud on the mortgagee and keep same free and clear from all liens and encumbrances; that he will not permit the same to be damaged, injured or depreciated, and will not attempt to sell, dispose of or secrete any of said goods and chattels, or any interest therein, or remove or permit the same to be removed from the county wherein he now resides, without the written consent of said mortgagee, and will not encumber or permit any encumbrance or lien of any character whatsoever against the same; and that he will pay all taxes that may be levied against said goods and chattels, this instrument or the indebtedness secured hereby.

Mortgagor warrants that he will not use or cause or permit to be used the Car herein mentioned for the transportation of liquor, wines or any other beverage, for personal or commercial use, prohibited by any Federal or State statute to be transported, and it is hereby agreed that should the Car, herein-before described be used for such purpose or any other unlawful purpose, it shall be considered as a default under the mortgage, whether or not, there shall be a default under any other terms or conditions thereof, which shall entitle the holder hereof to immediate and continued possession, by replevin or otherwise, of the Car herein described.

Mortgagee may, at its option, at the expense of mortgagor, insure said goods and chattels until fully paid against loss by fire and theft for not less than the amount owing hereunder, and said policy and/or policies shall be payable to and protect the interest of mortgagee and mortgagor may cancel such insurance at any time and shall receive the return premium, if any, therefor.

And in case said mortgagor shall neglect or refuse to pay said taxes as aforesaid, or permit said goods or chattels to be destroyed, injured or depreciated, then said mortgagee may at said mortgagee's option pay all such taxes and assessments aforesaid, repair any damage or injuries and restore any depreciation; and all sums of money thus paid, or incurred by these presents and shall be repayable upon demand from said mortgagor to said mortgagee, and shall be secured by these presents and be paid out of the proceeds of the sale of said goods and chattels hereby mortgaged.

In case default be made in the payment of said note or interest after maturity, or of any of the [illegible] or in case of insolvency or bankruptcy of said mortgagor, or if any execution, attachment, sequestration or other writ shall be levied upon any of said goods and chattels, or if said mortgagor shall attempt to remove the same without the consent of said mortgagee, or if said mortgagor shall make an assignment for the benefit of creditors, or if said mortgagor shall fail to keep and perform any of the covenants, stipulations and agreements herein contained on his part to be performed, or if said mortgagor shall cancel or fail to keep in force any policy against the hazards of fire and theft, or if said mortgagor shall at any time deem himself unsafe or insecure, or shall abscond or do the like upon the happening of said contingencies or any of them, all of said payments undertaken on the part remaining unpaid, the said mortgagee, [illegible] at the option without notice, is hereby authorized to enter upon the premises of the mortgagor or other place where said goods and chattels may be found, and take possession of the same, and all copies of written instruments, and books of account relating to said goods and chattels, and the same and all copies of written instruments, and books of account relating to said goods and chattels, and the same and all copies of written instruments, and books of account relating to said goods and chattels, and the same

Mortgagor's Name	Motor No.	Model	Year	New or Used	Type of Body & Truck Ton Capacity	Adv. H. P.	No. Cyl.	Price	Int. Rate	Cash Down Payment
[illegible]	10495	Coupe	1930	New			8			

[illegible] with all standard [illegible] and equipment, which said personal property is to remain in the possession of said mortgagor at [illegible] or the mortgagee shall [illegible] said mortgage, said chattels, said duly and said security note and notes, and the conditions of this mortgage are fulfilled; and said mortgagor warrants same to be free and clear from any and all encumbrances.

TO HAVE AND TO HOLD the same unto said mortgagee, said mortgagee's heirs, personal representatives, successors and assigns forever.

Provided always, and these presents are upon the express condition that if said mortgagor shall well and truly pay or cause to be paid to said mortgagee, [illegible] mentioned, with interest thereon, in accordance with the terms of his certain promissory note bearing even date herewith, signed by said mortgagor, payable to said mortgagee or order in 12 monthly installments of $69.35 each and maturity on the [illegible] each consecutive installments, payable at the office of Commercial Credit Corporation, Dallas, Texas, with interest after maturity at the highest legal contract rate until paid, and any renewals of the same, or any part thereof, with interest thereon at the highest legal contract rate until paid, promptly and faithfully perform each and every the covenants, stipulations and agreements herein contained on his part to be performed then this instrument shall be void, otherwise to remain in full force and effect. It is agreed that said note may be detached for collection purposes.

Said mortgagor further promises that he will not [illegible] said goods and chattels [illegible] and maintain said [illegible] in good repair, without any [illegible] the mortgagee and [illegible] and will not [illegible] the same to be damaged, injured or depreciated, and will not attempt to sell, dispose of or [illegible] of said goods and chattels, or any interest therein, or remove or permit the same to be removed from the county wherein the [illegible] without the written consent of said mortgagee and will not encumber or permit any encumbrance or lien of any character whatsoever against [illegible]; said that he will pay all taxes that may be levied against said goods and chattels, this instrument or the indebtedness secured hereby.

Mortgagor [illegible] that he will not use or cause to permit to be used the Car herein mentioned for the transportation of [illegible] whether by [illegible] other beverage, for personal or commercial use, prohibited by any Federal or State statute to be transported, and it is hereby agreed that should the Car, hereinbefore described be used for such purpose or any other unlawful purpose, it shall be considered at a [illegible] whether the mortgagee shall [illegible] default under any other terms or conditions thereof, which shall entitle the holder hereof to immediate and continued possession, by replevin or otherwise, of the Car herein described.

Mortgagee may, at its option, at the expense of mortgagor, insure said goods and chattels until fully paid against loss by fire and theft for not less than the amount owing hereunder, and said policy and/or policies shall be payable to and protect the interest of mortgagee and mortgagor as may [illegible] such insurance as may come, and shall receive the return premium, if any, therefor.

And in case said mortgagor shall neglect or refuse to pay said taxes as aforesaid, or permit said goods or chattels to be destroyed, injured or depreciated, then said mortgagee may at said mortgagee's option pay all such taxes and assessments aforesaid, repair any damage or injuries and restore any depreciation; and all sums of money thus paid by said mortgagee shall be secured by these presents and shall be repayable upon demand from said mortgagor to said mortgagee, and shall be realized [illegible] from the proceeds of the sale of said goods and chattels hereby mortgaged.

In case default be made in the payment of said note or interest when maturity, or of any of the payments [illegible] said note, or any extension thereof, or if any [illegible] assignment or other writ shall be levied [illegible] or if [illegible] petition for bankruptcy shall be filed by or against said mortgagor, or if said mortgagor shall make an assignment for the benefit of the creditors, or if said mortgagor shall fail to keep and perform any of the covenants, stipulations and agreements herein contained on his part to be performed, or if said mortgagor shall [illegible] or if said property [illegible] or if said mortgagor shall [illegible] the boundaries of the [illegible] and thereof, or if said mortgagor shall [illegible] or any [illegible] or if [illegible] or shall [illegible] or to the then [illegible] of said mortgagee or any of [illegible] or if [illegible] or if [illegible] or if

IT IS ABSOLUTELY NECESSARY THAT THIS FORM BE FILLED IN COMPLETELY

To Good Street Motor Co., Town Dallas

(Name of Dealer)

Print Name

Home Address 2000

Living with Parents

Age 34 Color White Married Single Number of Dependents, Including Wife

Recorded in Book of

Position Occupied

Business Address

Former Employer None

Previous Car Purchased from Good Street Motor Co.

Trade References

Nearest Relative Not Living With Me

Banking Account

Car Will be Kept in

Fraternal Orders and Unions of which you are a member:

Witness

Witness

Ray Carter

Witness

F. G. Gallegly

Witness

Fraternal Orders and Unions of which you are a member:

Witness: Roy Carter

Witness: F A Talpey

Jack Taylor

IMPORTANT	List price of Car, Tractor, Truck & Chassis	1165.00
	Freight and Wa	
	Extra Equipment—Itemize	
	Cash Selling or Rental Price	
	Less: Cash Payment 425.00	425.00
	Less: Allowance, if any, on "Trade In" 300.00	
FILL	Unpaid Balance	740.00
	Add for Credit Sale	92.68
	Amount of Note	832.68
	Divided Into 12 Equal Monthly Payments of	69.34

DESCRIBE "TRADE IN" BELOW

Make of "Trade In"	Type of Body	Year Model	License No.
DeSoto	Cpe	29	104188

EXHIBIT

109672—32. (Face p. 38.) No. 2

In United States District Court

Law No. 197

UNITED STATES OF AMERICA

vs.

ONE DE SOTO COUPÉ

Findings of fact and conclusions of law

Filed February 7, 1931

I

That on or about September 17, 1930, Roy Campbell was and is collector of customs of the United States at San Antonio, Texas, and that Brooks County, Texas, is in his district.

II

That on or about the 17th day of September, 1930, near the town of Oak Grove, county of Brooks, and within the Corpus Christi Division of the Southern District of Texas, one E. B. McCulley, a customs officer of the United States, acting on behalf of and for the said Roy Campbell, seized a certain De Soto coupé, serial No. L-72-YW, motor No. 19495, being the same automobile as is the respondent in the above-named libel.

III

That at the time the said respondent automobile was seized, as aforesaid, there was deposited therein certain merchandise, to wit, twenty-two five-gallon cans of alcohol and one hundred and forty-four (144) pints of whiskey and twenty-one (21) pints of beer; that the said distilled spirits were fit for beverage purposes, and then and there contained more than one-half of one per cent of alcohol, by volume; that at the time when the said merchandise was deposited in said automobile, as aforesaid, the duty imposed thereon by customs laws was unpaid and still remains unpaid; that there were no marks, stamps, or labels on the said bottles or containers to indicate that said duties due thereon had been paid; that the bottles of beer bore labels of a brand of Mexican manufacture; that the alcohol was in containers bearing the following impressed labels: "Alcohol desturbado cristilino y de la mas alta graduacion; Marco Victoria; Supo 9 lits.; United Sugar Companies, Los Mochis, Sinaloa, Mexico; B de Ro No. 1;" that the whiskey was labeled "Straight American whiskey bottled in Juarez, Mexico"; that E. B. McCulley, the customs inspector, who had made numer-

ous seizures of smuggled liquors, knew the genuine labels of Victoria alcohol, American straight whiskey, bottled in Juarez, Mexico, through his experience as a customs officer and by personal inspection of genuine labels made in the course of a trip to Mexico in which the genuine labels were examined and inspected; that a comparison on the labels on the merchandise seized in this case showed them to be the genuine labels of the Mexican breweries, and that the labels on this merchandise is the same kind of labels as were on merchandise in the previous seizures in that section, and that straight American whiskey is a well-known brand of whiskey manufactured in Juarez, Mexico, and Victoria alcohol is a well-known brand of alcohol manufactured in Los Mochis, Sinaloa, Mexico; that said merchandise was imported into the United States contrary to law, without the payment of duty thereon and without being declared to United States customs officers.

IV

That the facts of the seizure are as follows: That shortly
65 before midnight on the evening of September 17, 1930, Inspector E. B. McCulley, while station [stationed] on the San Antonio-Hidalgo Road, a public highway in Brooks County, in the State of Texas, which is the main highway from that county to the Mexican border, discovered this De Soto coupé being driven along such highway; that the car approached the said officer, and upon being flagged by the officer the driver thereof stopped the automobile, and the above-described merchandise was then discovered in the car; that the driver then informed the officer how much merchandise, to wit, alcohol, beer, and liquor, he had, and handed the key to the rear cover to the officers; that the officers could see the merchandise from the running board of the automobile; that the driver, A. D. Young, told the officers that he had placed his coupé in a garage in Texas and gone to Reynosa, Mexico, by bus to arrange for the purchase of the merchandise; that such merchandise had been transported across the border by Mexican smugglers and loaded into his car in the State of Texas; that the car had been used to transport the merchandise from such point to the place of seizure; that the said A. D. Young had through his agents deposited the merchandise in the respondent automobile; that at the time of the arrest the respondent vehicle was being used by A. D. Young for the purpose of transporting the merchandise seized therein; that said merchandise was imported into the United States substantially in the manner as stated by the said A. D. Young.

V

That the said E. B. McCulley was a mounted customs inspector; that he had been in the Customs Service at Falfurrias, Texas, for approximately two years; that during such time he had made

66 numerous seizures of contraband intoxicating liquors in Falfurrias; that he has never made any seizures, nor known of any seizures, of any contraband merchandise except intoxicating liquors and the means of their conveyance at Falfurrias; that Falfurrias is between seventy and eighty miles from the nearest point on the Mexican border.

VI

That the Commercial Credit Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Texas.

VII

That on the 8th day of August, 1930, one A. D. Young purchased from the Perry Motor Company at Dallas, Texas, a reputable automobile dealer, the above-described automobile under a chattel-mortgage contract of sale, pursuant to which said dealer retained a purchase-money lien upon such car until the purchase price thereof should have been fully paid; that at the time of said sale said corporation required and secured a credit statement from said purchaser in which said purchaser alleged that he was engaged in business on his own account; that such purchaser gave credit references and other information in accordance with the customary course of the dealer's business; that thereafter such note and mortgage were, for a valuable consideration, sold to the Commercial Credit Company, Inc., and it is the owner and holder of a valid lien upon such automobile, on which there is at this time an unpaid balance of eight hundred and thirty-two and 08/100 ($832.08)

67 VIII

That such lien is a purchase-money chattel-mortgage lien and is bona fide; that it was created by the dealer in good faith, without any knowledge of any facts which would put the dealer upon notice that such automobile might be used in violation of any laws of the State of Texas or of the United States; that such lien contained a covenant that the purchaser would not use the automobile in violation of any Federal or State statute with reference to intoxicating liquor; that the Commercial Credit Company, Inc., acted in good faith in buying such chattel-mortgage lien; that it had no knowledge of any facts indicating, or tending to indicate, that the purchaser would use such automobile in violation of any Federal or State statute; that the seizure in this case was incurred without wilful [willful] negligence or without any intention on the part of the Commercial Credit Company, Inc., to defraud the revenue or to violate the law.

IX

That Commercial Credit Company, Inc., claimant herein, had no notice that said automobile was being used for illegal purposes and knew of no facts or circumstances which would reasonably or otherwise lead them to believe that the automobile was being so used; that the Commercial Credit Company, Inc., is now the legal owner of the chattel mortgage upon said De Soto coupé; that no payments have been made under the aforementioned chattel-mortgage contract since the 17th day of September, 1930; that the Commercial Credit Company, Inc., is under the terms of such chattel mortgage entitled to the immediate and exclusive possession of said automobile except for the claims of the Government as herein asserted.

68 From the foregoing facts the court finds as conclusions of law.

I

That the above-named vehicle should be forfeited to the United States of America because smuggled merchandise was seized on said vehicle.

II

That the libelant, United States of America, should recover from the intervener and claimant, Commercial Credit Company, Inc., and the United States Fidelity and Guaranty Company, its surety, the costs of suit, and the storage [storage] and warehouse charges properly incurred from the date of seizure.

III

That the claim of the intervener to the property or the proceeds thereof shall be denied and the forfeiture shall be made absolute against the Commercial Credit Company, Inc.

J. C. HUTCHESON, Jr., *Judge.*

O. K. as to form.

DALLAS C. BIGGERS.
ROY W. MCDONALD.

69 In United States District Court

Law–197

UNITED STATES OF AMERICA

vs.

ONE DE SOTO COUPÉ AND ONE LOT OF INTOXICATING LIQUOR (SEIZED from A. D. Young on September 17, 1930)

Waiver of jury

Filed January 6, 1931

It is stipulated by the United States of America, plaintiff, and by the Commercial Credit Company, Incorporated, and the United States Fidelity & Guaranty Company of Maryland, claimant and surety, respectively, that a jury trial in the above styled and numbered case shall be by both parties waived.

ALBERT THOMAS,
Attorney for Commercial Credit Company, Incorporated,
DALLAS C. BIGGERS,
ROY W. MCDONALD,
Attorney for Commercial Credit Company, Incorporated, and United States Fidelity & Guaranty Company of Maryland, Claimant and Surety, Respectively.

In United States District Court

Law No. 197

UNITED STATES OF AMERICA

vs.

ONE DE SOTO COUPÉ, ETC. (SEIZED FROM A. D. YOUNG ON 9–17–30)

Final judgment

Filed February 9, 1931

70 On this 7th day of February, A. D. 1931, came on to be heard the above styled and numbered cause, and it appearing to the court that the above-styled automobile was seized while there was deposited and concealed therein certain foreign distilled liquor which had lately theretofore been imported into the United States contrary to law; that libel was filed herein and monition duly published; and that no claim was filed herein except that of Commercial Credit Company; and it further appearing to the court that Commercial Credit Company, of Dallas, Texas, as principal, and United States Fidelity & Guaranty Company, of

Dallas, Texas, as sureties, did bind themselves to the United States in the sum of two hundred and fifty ($250.00) dollars, in the event of the condemnation and forfeiture of said automobile, to pay to the United States all of the costs and expenses of the proceedings to obtain such condemnation and forfeiture;

It is ordered, adjudged, and decreed that said automobile be, and the same is hereby, forfeited to the United States and that intervener take nothing by reason of its intervention.

It is further ordered, adjudged, and decreed that said automobile be by the marshal sold as provided by law, and the proceeds of the sale be disposed of as provided by law.

It is further ordered, adjudged, and decreed that the United States do have and recover costs of seizure and storage and court costs herein of Commercial Credit Company, principal, and United States Fidelity & Guaranty Company, sureties.

It is further ordered and decreed that a certified copy of
71 this judgment be delivered to the United States marshal at Houston, Texas, and to the collector of customs, San Antonio, Texas.

J. C. HUTCHESON, Jr., *Judge.*

Stipulation as to sale of property, filed March 9, 1931, omitted from the printed record, as per stipulation of counsel copied at page 1.

* * * * * * *

Petition for appeal, filed Feb. 26, 1931, omitted from the printed record, as per stipulation of counsel copied at page 1.

* * * * * * *

Assignment of errors, filed Feb. 26, 1931, omitted from the printed record, as per stipulation of counsel copied at page 1.

* * * * * * *

Appeal bond, filed March 17, 1931, omitted from the printed record, as per stipulation of counsel copied at page 1.

* * * * * * *

72 [Clerk's certificate to foregoing transcript omitted in printing.]

Original citations omitted from the printed record, the originals thereof being on file in the office of the clerk of the U. S. Circuit Court of Appeals.

* * * * * * *

73 [Minute entry of argument and submission, Nov. 12, 1931, omitted in printing.]

74 In United States Circuit Court of Appeals for the Fifth Circuit

No. 6221

COMMERCIAL CREDIT COMPANY, INC., APPELLANT

versus

UNITED STATES OF AMERICA, APPELLEE

Appeals from the District Court of the United States for the Southern District of Texas

(December 2, 1931)

Before BRYAN, FOSTER, and SIBLEY, Circuit Judges

Opinion of the court

Filed December 2, 1931

SIBLEY, Circuit Judge: This is a consolidated appeal from judgments of absolute forfeiture under the customs laws of three automobiles on which appellant had valid liens to secure a balance of purchase money. Appellant's contention is that on the face of the libels and upon the facts found forfeiture cannot be had under the customs laws but only under the national prohibition act (27 U. S. C. 40), under which its rights as an innocent lienor would be protected. The contrary contention is that the customs laws constitute an independent system which may be enforced regardless of parallel provisions of the prohibition law. Each libel asserts a seizure of
75 the automobile by a customs officer in a named county of Texas while there was being concealed and transported therein foreign merchandise, to wit, whiskey and alcohol, which had lately theretofore been unlawfully imported into the United States. Taking as typical the first case in the record, the facts found are that on Oct. 29th, 1930, a customs inspector seized the automobile and arrested the driver in Brooks County, Texas, while transporting eighteen five-gallon cans of alcohol and seventeen quarts of whiskey which had been bought in Mexico and smuggled by the seller across the Rio Grande into Texas and loaded in Texas on the automobile and thence transported to the place of seizure. The merchandise was not declared, and a tax was due on it but not paid, and no revenue stamps appeared on the packages. The seizing officer, though a customs inspector, was engaged wholly in seizing contraband liquors and the carrying vehicles, his headquarters being at Falfurrias, Texas, about seventy miles from the border. The appellant held by transfer a valid purchase-money mortgage for $765.40 against the automobile which had been taken by the mortgagee and acquired by appellant in good faith with due diligence,

and without any intent to defraud the United States, and without knowledge that the car would be used to violate the law.

The facts make a clear case for forfeiture under 19 U. S. C. 482, 483, as of a vehicle, not that of a common carrier, conveying merchandise which had been unlawfully introduced into the United States. The tariff act of 1930, § 1401 (c), repeats the provision of the act of 1922 that the word "merchandise" shall include articles the importation of which is prohibited. But the case is with equal clearness within the language of 27 U. S. C. 40. The opening words of that section, "When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of law intoxicating liquors, etc.," are on their face not restricted to prohibition officers. United States officers
76 and not State officers are meant (Gambino v. United States, 275 U. S. 310), but a customs officer of the United States is an officer of the law and included. He is bound to seize the liquor. A customs officer made the seizure in Commercial Credit Co. v. United States (276 U. S. 226). So in the succeeding sentence, "Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle * * * and shall arrest any person in charge thereof," the language is not less broad. The same situation and the same officers as defined in the previous sentence are still in view. The section next requires the arresting officer to proceed against the person arrested "under the provisions of this chapter," that is, Title II of the national prohibition act, and requires certain dispositions of the vehicle which in case of conviction result in its sale, a satisfaction of bona fide liens, and payment of the balance into the Treasury. Though there are in the section no express words or forfeitu'e, it has always been understood to provide a forfeiture of the vehicle with a saving of the rights of innocent persons. Especially to effectuate this just saving it has been held that the language of the section was made mandatory, and that its provisions must be followed where they apply. (Richbourg Motor Co. vs. United States, 281 U. S. 528.) In that case the arrest and seizure were not made by a customs officer, and the competing laws were those affecting the internal revenue rather than those affecting customs duties, but we see therein no tenable ground of distinction. Neither as respects the internal-revenue nor the customs laws should it be said that there is a repeal by the national prohibition act. Consistency of taxation with prohibition has been often asserted. (United States v. One Ford Coupé, 272 U. S. 321; United States v. Ryan, decided by
77 Supreme Court Nov. 23rd, 1931.) The provisions for forfeiture of vehicles and the like used for the fraudulent removal, transportation, or concealment of articles taxed under each system (19 U. S. C. 482, 483; 27 U. S. C. 1181) stand unrepealed. They are general and apply to many taxed articles other than intoxicating liquors and to many situations which 27 U. S. C. 40 does

not fit. The latter is in the nature of specific legislation which operates where it applies by way of exception to the general legislation. (One Ford Coupé v. United States, 272 U. S. 321.) If no person can be arrested, or if the transportation by reason of proper permits be lawful under the prohibition law and unlawful only because of fraud on the revenue, so that there could be no prosecution under the prohibition law, or if the person arrested be an ignorant and therefore innocent dupe of a guilty owner and be acquitted for that reason, grave question may exist of the exclusive application of 27 U. S. C. 40. So there might be such question if the vehicles here involved had contained substantial quantities of contraband merchandise other than intoxicating liquor on account of which forfeiture was sought. And it has been held that a vessel or vehicle used in the act of unlawful importation of intoxicating liquors might be forfeited under the customs and shipping laws, the subsequent unlawful transportation within the United States not superseding or annulling the offence and the forfeiture completed at the border. (United States v. One Nash Auto, 23 Fed. (2d) 126; "The Pilot," 32 Fed. (2d) 491.) But none of these considerations arise here. The vehicles involved were used only in transportation within the United States, and carried intoxicating liquors alone, and the persons in charge were arrested, and for aught that appears are guilty under the prohibition laws. No reason exists why the
78 mandate of 27 U. S. C. 40 should not be followed out by the officers of the United States in their efforts to condemn the vehicles. The judgment is accordingly reversed, with direction to dismiss the libels without prejudice.

79 In United States Circuit Court of Appeals

No. 6221

COMMERCIAL CREDIT COMPANY, INC.

versus

UNITED STATES OF AMERICA

Judgment

December 2, 1931

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Texas, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgments of the said District Court in this cause be, and the same are hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court with direction to dismiss the libels without prejudice.

80 In United States Circuit Court of Appeals for the Fifth Circuit

[Title omitted.]

Order staying mandate thirty days from December 23, 1931

Filed December 23, 1931

On consideration of the application of the appellee in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellee to apply for, and to obtain, a writ of certiorari from the Supreme Court of the United States, it is ordered that the issue of the mandate of this court in said cause be, and the same is, stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition and record have been filed, and that due proof of service of notice thereof under paragraph 3 of rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 23rd day of December, 1931.

(Signed) RUFUS E. FOSTER,
United States Circuit Judge.

81 [Clerk's Certificate to foregoing transcript omitted in printing.]

82 Supreme Court of the United States

Order allowing certiorari

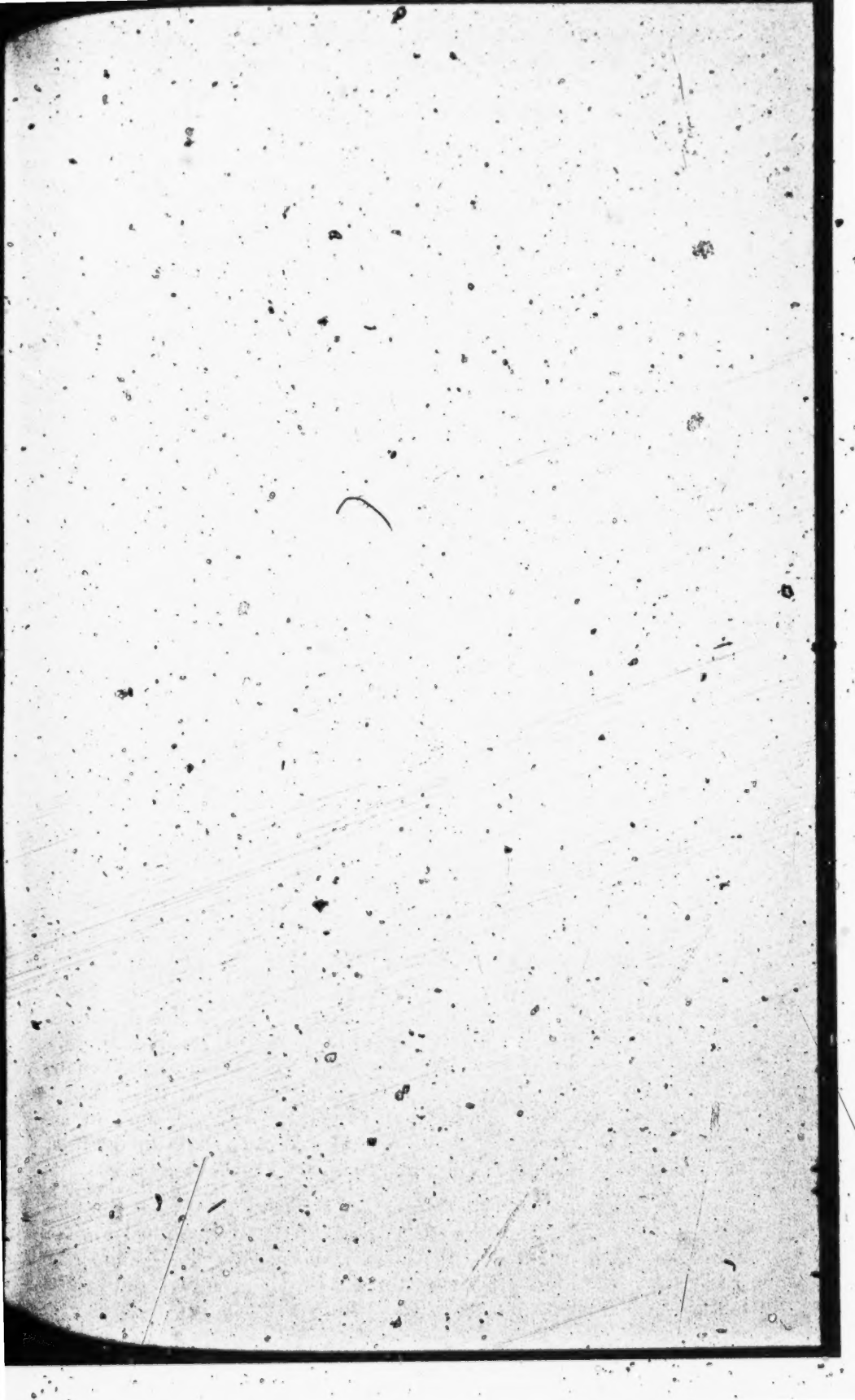
Filed March 21, 1932

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted, and the case is assigned for argument immediately following case No. 574, General Motors Acceptance Corporation et al. vs. The United States of America.

And it is further ordered that the duly certified copy of the transcript of the proceedings below, which accompanied the petition, shall be treated as though filed in response to such writ.

[Indorsement on cover:] Enter. Attorney General. File No. 36548. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 734. The United States of America, petitioner, *vs.* Commercial Credit Company, Inc. Petition for a writ of certiorari and exhibit thereto. Filed February 26, 1932. File No. 36548.

U. S. GOVERNMENT PRINTING



FILE COPY

No. 754

In the Supreme Court of the United States

October Term, 1951

[redacted]

v.

[redacted]

[redacted]

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103387—32——1

In the Supreme Court of the United States

OCTOBER TERM, 1931

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

COMMERCIAL CREDIT COMPANY, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Fifth Circuit entered December 2, 1931, reversing the decrees of the District Court for the Southern District of Texas declaring the forfeiture of three automobiles libelled under Sections 3061 and 3062 of the Revised Statutes (U. S. C., Title 19, Secs. 482–483). The three cases were consolidated and decided together on one record in the court below and in each case the Commercial Credit

Company was the intervening lien claimant. The opinion below (R. 73) is reported in 53 F. (2d) 977. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Does Section 26 of Title II of the National Prohibition Act (U. S. C., Title 27, Section 40) provide the exclusive remedy for the forfeiture of a vehicle seized by customs officers while used in concealing and transporting intoxicating liquor imported in violation of R. S., Sections 3061 and 3062?

STATEMENT

Three vehicles, two De Soto automobiles and one Fargo Truck, were separately libelled by the United States in the Southern District of Texas for alleged violation of Sections 3061 and 3062 of the Revised Statutes.* (R. 6, 35, 56.) In each libel it was charged that the vehicle was seized while being used in concealing and transporting substantial amounts of intoxicating liquors unlawfully imported into the United States.

The respondent intervened as a lien claimant in each of the three cases, filing answers and motions to dismiss. (R. 7, 36, 58.) It pleaded that it had secured liens upon the several vehicles in good faith, that it had no knowledge that they would be

* The pertinent statutory provisions are set forth in Appendix A, pp. 6–8, *infra*.

put to an illegal use, and that the United States could proceed for forfeiture only under the National Prohibition Act.

Jury trials were waived in writing (R. 18, 46, 69), and in due course the District Court made findings of fact (R. 13, 41, 63). In each case it found that the vehicle was seized in the act of transporting liquor which had been imported illegally into the United States, and that the several liens of the claimant were acquired in good faith and without knowledge that the vehicle would be used in violation of law. But it rejected the claimant's contention that the Government's exclusive remedy was that given by Section 26 of Title II of the National Prohibition Act, and judgments of forfeiture were accordingly entered. (R. 18, 50, 69.)

In only one of the cases—the first decided—did the District Court deliver an opinion. (R. 47.) *United States* v. *One Fargo Truck*, 46 F. (2d) 171.

The claimant's appeals in the three cases were consolidated in the Circuit Court of Appeals pursuant to stipulation, and the cases docketed and considered as a single case. (R. 21–22.) That court reversed the judgments of the District Court. (R. 76.)

SPECIFICATION OF ERROR TO BE URGED

The Circuit Court of Appeals erred in holding that Section 26 of Title II of the National Prohibition Act provides the exclusive remedy for the forfeiture of a vehicle seized by customs officers while

being used in the concealment and transportation of intoxicating liquor imported in violation of R. S. Sections 3061 and 3062.

REASONS FOR GRANTING THE WRIT.

In *Richbourg Motor Co.* v. *United States,* 281 U. S. 528, this Court held that Section 26, Title II of the National Prohibition Act excluded the Government from the right to forfeit, under R. S. Section 3450, vehicles used in the removal or concealment of intoxicating liquor with intent to deprive the United States of its taxes, if the vehicle was at the time transporting intoxicating liquor in violation of the National Prohibition Act.

A great diversity of opinion has arisen among the lower Federal courts in respect of the application of the decision in the *Richbourg* case to the forfeiture of vehicles and vessels under the customs and navigation laws where transportation of liquor in violation of the National Prohibition Act is also involved. (A synopsis of the decisions appears in Appendix B, pp. 9–21, *infra.*)

The question involved herein is now before this Court in *General Motors Acceptance Corporation* v. *United States,* No. 574, on certificate from the Circuit Court of Appeals for the Ninth Circuit. In that case the libelled vehicles were seized at established ports of entry on the Mexican border after having transported liquor from Mexico into the United States. In the instant case none of the vehicles had been used in transporting the liquor into

the United States. It is believed that these differences of fact make it desirable that the instant case be also considered by this Court, so that it may have before it several of the great variety of situations arising in these forfeiture cases. It is of major importance to the Government that the doubt and confusion which now exists by reason of the divergent opinions in the lower courts should, so far as possible, be definitely removed.

Wherefore, it is respectfully submitted that the petition should be granted.

THOMAS D. THACHER,
Solicitor General.

FEBRUARY, 1932.

APPENDIX A

Sections 3061 and 3062 of the Revised Statutes (U. S. Code, Title 19, Sections 482 and 483)

SEC. 3061. Any of the officers or persons authorized to board or search vessels may stop, search, and examine as well without as within their respective districts, any vehicle, beast, or person, on which or whom he or they shall suspect there is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law, whether by the person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise, and to search any trunk or envelope, wherever found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law; and if any such officer or other person so authorized shall find any merchandise on or about any such vehicle, beast, or person, or in any such trunk or envelope, which he shall have reasonable cause to believe is subject to duty, or to have been unlawfully introduced into the United States, whether by the person in possession or charge, or by, in, or upon such vehicle, beast, or otherwise, he shall seize and secure the same for trial.

SEC. 3062. Every such vehicle and beast, or either, together with teams or other motive power used in conveying, drawing, or propelling such vehicle or merchandise, and all other appurtenances, includ-

ing trunks, envelopes, covers, and all means of concealment, and all the equipage, trappings, and other appurtenances of such beast, team, or vehicle, shall be subject to seizure and forfeiture. If any person who may be driving or conducting, or in charge of any such carriage or vehicle or beast, or any person traveling, shall willfully refuse to stop and allow search and examination to be made as herein provided, when required so to do by any authorized person, he shall be punishable by a fine of not more than one thousand dollars, nor less than fifty dollars.

Section 26, Title II, of the National Prohibition Act (Act of October 28, 1919, c. 85, Sec. 26, 41 Stat. 305, 315—U. S. Code, Title 27, Sec. 40)

When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law. Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested under the provisions of this title in any court having competent jurisdiction; but the said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to

return said property to the custody of said officer on the day of trial to abide the judgment of the court. The court upon conviction of the person so arrested shall order the liquor destroyed, and unless good cause to the contrary is shown by the owner, shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure, and the cost of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise at said hearing or in other proceeding brought for said purpose, as being bona fide and as having been created without the lienor having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor, and shall pay the balance of the proceeds into the Treasury of the United States as miscellaneous receipts. All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property. If, however, no one shall be found claiming the team, vehicle, water or air craft, or automobile, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken or if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if no claimant shall appear within ten days after the last publication of the advertisement, the property shall be sold and the proceeds after deducting the expenses and costs shall be paid into the Treasury of the United States as miscellaneous receipts.

APPENDIX B

United States v. *Ford Coupé Automobile*, 43 F. (2d) 212 (S. D. Fla.)

The automobile in this case was seized while transporting merchandise (liquor) which had been introduced into the United State in violation of law. The driver was indicted for transportation of liquor in violation of the National Prohibition Act. Subsequently, after the driver had forfeited his appearance bond and absconded, the United States Attorney filed a libel for forfeiture against the vehicle under Sections 3061 and 3062 of the Revised Statutes (U. S. C., Title 19, Sections 482, 483). The court held that the Government's exclusive remedy against the car was found in Section 26, Title II of the National Prohibition Act, and ordered the libel to be dismissed.

United States v. *One Studebaker Automobile*, 45 F. (2d) 430 (Ariz.)

The automobile in this case was seized in Arizona in close proximity to the Mexican border while transporting smuggled liquor. The driver was charged and convicted of violating Section 593 of the Tariff Act of 1922 (U. S. C., Title 19, Secs. 496–497). Subsequent to the termination of the criminal case the Government filed a libel for the forfeiture of the vehicle under the provisions of Sections 3061 and 3062 of the Revised Statutes

(U. S. C., Title 19, Secs. 482, 483). The Exporters Insurance Company intervened in the libel suit as a lien claimant and contended that the libel as filed would not lie and that the Government's exclusive remedy *in rem* was that defined in Section 26 of Title II of the National Prohibition Act. The court held that the forfeiture provisions of Section 26 were exclusive under the facts and ordered the libel to be dismissed.

The *Sebastopol,* 47 F. (2d) 336 (S. D. N. Y.)

The *Sebastopol,* a British vessel, was seized while transporting a large cargo of smuggled liquor in the waters of the port of New York. Her crew were charged with conspiracy to violate the liquor laws of the United States. The Government filed a libel against the vessel, claiming the penalty prescribed by Section 584 of the Tariff Act of 1922 (U. S. C., Title 19, Sec. 486). This was a proceeding authorized under Section 594 of the same Act (U. S. C. Title 19, Sec. 498). The District Court held that the Government's exclusive remedy was under Section 26 of Title II of the National Prohibition Act and ordered the dismissal of the libel. The case is now pending in the Circuit Court of Appeals for the Second Circuit on the Government's appeal.

The *Ruth Mildred,* 47 F. (2d) 336 (S. D. N. Y.)

The Auxiliary Schooner *Ruth Mildred,* a vessel licensed under United States law for fishing, was discovered transporting a cargo of intoxicating liquor in Long Island Sound and was seized therefor. A criminal prosecution for conspiracy to violate the liquor laws was instituted against her master and others unknown. The Government filed a forfei-

ture libel against the ship under Section 4377 of the Revised Statutes (U. S. C., Title 46, Sec. 325). The District Court held that the libel could not be sustained because the Government's sole rights of forfeiture were those declared in Section 26 of Title II of the National Prohibition Act. The case is now pending in the Circuit Court of Appeals for the Second Circuit on the Government's appeal.

Colon v. *Hanlon,* 50 F. (2d) 353 (C. C. A. 1st)

In this case the Motor Boat *Norberta,* a licensed vessel of the United States, was seized while transporting liquor within United States territorial waters in Porto Rico. The act constituted a violation of the provisions of her license. The four men who composed her crew were prosecuted for illegal possession and transportation of liquor in violation of the National Prohibition Act. The jury found them all "not guilty." Before the criminal proceedings were terminated the Collector of Customs, who had custody of the seized vessel, proceeded against it summarily for forfeiture under the provisions of Sections 607 and 609 of the Tariff Act of 1922 (U. S. C., Title 19, Secs. 514, 516), alleging violation of Section 4377 of the Revised Statutes (U. S. C., Title 46, Sec. 325). In due time, no claimant having appeared, the vessel was declared forfeited and was ordered to be delivered to the Customs for official use under the provisions of the Act of March 3, 1925 (U. S. C., Title 19, Sec. 522). After the acquittal in the criminal case Colon, the owner of the boat, filed proceedings in the District Court of Porto Rico, claiming that the administrative forfeiture of the boat was nugatory, that the Government's exclusive rights of forfeiture were

declared in Section 26, Title II of the National Prohibition Act, and asking the court to return the vessel to his possession. The District Court denied the owner's petition and the Circuit Court of Appeals reversed on appeal.

Corriveau v. *United States,* 53 F. (2d) 735 (C. C. A. 1st)

Two American licensed vessels, the *Overland* and the *Alibi II,* were seized and libelled by the United States for alleged violations of Section 4377 of the Revised Statutes (U. S. C., Title 46, Sec. 325), and Section 453 of the Tariff Act of 1930 (U. S. C., Title 19, Sec. 1453). The evidence indicated that they had been engaged in the liquor smuggling business, but they were not seized until the completion of their unlawful enterprise and no one was arrested thereon in the act of transporting liquor. The Circuit Court of Appeals held that the provisions of Section 26 of Title II of the National Prohibition Act were mandatory wherever they could be applied, but found that they were not applicable under the facts of the two cases. Decrees of forfeiture were entered in favor of the United States.

The *Pilot,* 43 F (2d) 491 (C. C. A. 4th)

The *Pilot* was seized in the United States territorial waters while transporting a cargo of smuggled liquor. She was a vessel of the United States licensed for fishing. The crew of the vessel was indicted for violation of Section 593 of the Tariff Act of 1922 (U. S. C., Title 19, Secs. 496, 497), and two members thereof were convicted. The vessel was libelled for forfeiture under Section 587 of the Tariff Act of 1922 (U. S. C., Title

19, Sec. 489) and Section 4377 of the Revised Statutes (U. S. C., Title 46, Sec. 325.) It was contended by the owner of the *Pilot* that the Government's exclusive rights of forfeiture were those defined in Section 26 of Title II of the National Prohibition Act, but this contention was rejected by the Circuit Court of Appeals. The court ordered the forfeiture of the vessel under the libel as filed.

United States v. *One Reo Coupé Automobile*, 46 F. (2d) 815 (Mass.)

In this case the vehicle was seized while containing smuggled liquor and was libelled for forfeiture by the United States for alleged violation of Sections 3061 and 3062 of the Revised Statutes (U. S. C., Title 19, Secs. 482, 483). The driver was prosecuted under Section 593 (b) of the Tariff Act of 1922 (U. S. C., Title 19, Sec. 497). The District Court held that the forfeiture provisions of Section 26 of Title II of the National Prohibition Act were not exclusive and authorized forfeiture under the libel as filed. The court appears to have been of the view, however, that the vehicle was not seized while it was transporting liquor.

The *Daisy T.*, 48 F. (2d) 370 (Del.)

The *Daisy T.* was a licensed vessel which was seized while adrift in Delaware Bay laden with liquor. No one was arrested. Libel for forfeiture was filed by the United States, alleging violations of several sections of the Tariff Act of 1930, the Internal Revenue Statutes, and the Navigation laws. Claimant contended that, since there was evidence of liquor transportation, the forfeiture provisions of Section 26 of Title II of the National

Prohibition Act were exclusive and that the libel should be dismissed. The District Court held that even though the facts did constitute a violation of the National Prohibition Act the Government was not thereby precluded from claiming forfeiture under the other statutes pleaded in the libel. The court decreed forfeiture of the *Daisy T.* under Section 4377 of the Revised Statutes (U. S. C., Title 46, Sec. 325).

United States v. *Hayes et al.*, 52 F. (2d) 977 (E. D. N. Y.)

The American Yacht *Surf* was seized by the Coast Guard while transporting a cargo of intoxicating liquor in United States territorial waters off Montauk Point, New York. Members of her crew, Hayes and others, were indicted in the Eastern District of New York for conspiracy to violate the liquor laws. A motion was made by the defendants to suppress the evidence. Although the forfeiture of the yacht was not in issue, the court expressed the opinion that the forfeiture provisions of Section 26, Title II, of the National Prohibition Act did not supersede or displace the forfeiture provisions of the Tariff Act.

United States v. *Buick Coupé* (S. D. Fla.), decided December 30, 1931, not yet reported, and set out in full below

UNITED STATES OF AMERICA, LIBELLANT

vs.

BUICK COUPÉ, ENGINE NUMBER 2432476, RESPONDENT

STRUM, District Judge:

In this proceeding, commenced by information of libel, the United States seeks the forfeiture of one

Buick coupé, invoking for that purpose the provisions of the customs laws, Secs. 3061, 3062, Rev. Stat.; 19 U. S. C. A. 482, 483.

Tennant Finance Corporation intervened as claimant. The matter comes up for final hearing upon an agreed statement of facts, from which the following pertinent facts are found by the Court:

On October 1, 1929, one James Provenza, while driving a Buick coupé over the highway bridge connecting the City of St. Augustine, Florida, with Anatasia Island, in St. Johns County, Florida, was stopped by customs patrol inspectors, who immediately searched said automobile and found therein a large quantity of imported whiskey fit for use, and intended for use, for beverage purposes, upon which no duty had been paid, all of which the said Provenza acknowledged, and which liquor had been unlawfully imported apparently in violation of both the Tariff Act of 1922 and the National Prohibition Act. The liquor was imported, also, with intent to defraud the United States of taxes imposed thereon by law. Said officers thereupon arrested Provenza, seized the automobile and delivered the latter to the Collector of Customs of this district, who now holds the same.

Provenza was indicted upon two counts, the first count charging unlawful transportation contrary to the National Prohibition Act, the second charging concealment of unlawfully imported liquor contrary to Sec. 593–b, Tariff Act of 1922, 19 U. S. C. A., Sec. 497. Provenza pleaded guilty to the second count. What disposition was made of the first count does not appear.

The intervening claimant is the innocent owner of a conditional sales contract, by which title to the

said automobile is reserved to said claimant, said contract being now in default and claimant entitled to possession of the car thereunder as against Provenza.

Thus is presented the much-debated question whether the United States, in seeking the forfeiture of a land vehicle, in these circumstances, must proceed under Section 26 of the National Prohibition Act, 27 U. S. C. A. 40, by which the rights of innocent owners or lienors are saved, or whether, as has been done here, the United States may proceed under the customs laws, Secs. 3061, 3062, Rev. Stat.; 19 U. S. C. A. 482, 483, which take no notice of innocent owners and lienors.

The United States relied upon *U. S.* vs. *One Ford Coupé*, 272 U. S. 321, 71 L. Ed. 279, 47 A. L. R. 1025; *U. S.* vs. *One Fargo Truck*, 46 Fed. (2) 171; *U. S.* vs. *One Ford*, 21 Fed. (2) 628.

The claimant relies upon *Richbourg Motor Co.* vs. *U. S.*, 281 U. S. 528, 74 L. Ed. 1016; *U. S.* vs. *One Whippet Sedan*, 41 Fed. (2) 496; *Colon* vs. *Hanlon*, 50 Fed. (2) 353; *U. S.* vs. *One Studebaker*, 45 Fed. (2) 430; *U. S.* vs. *Ford Coupé*, 43 Fed. (2) 212.

From these cases, and others upon the subject, including the recent decision in *Commercial Credit Co.* vs. *U. S.* (C. C. A. 5), No. 6221, decided December 2, 1931, — Fed. (2) —, the following principles are deducible, at least as to land vehicles:

First. There is an effective and distinct field of operation for each of the forfeiture provisions of the customs laws, the revenue laws, and the National Prohibition Act, found, respectively, in Secs. 3061, 3062, Rev. Stat. (19 U. S. C. A. 482, 483); Sec.

3450, Rev. Stat. (26 U. S. C. A. 1181); and Sec. 26, National Prohibition Act (27 U. S. C. A. 40). Each is operative in its own field. Neither the revenue nor the customs laws, in the respect mentioned, are repealed by Section 26 of the National Prohibition Act, but the latter "is in the nature of specific legislation which operates where it applies, by way of exception" to the general customs and revenue laws just mentioned. The mandatory provisions of Section 26, National Prohibition Act, must be followed where they apply. The latter must be accorded an effective field of operation in harmony with its purpose, as evidenced by both its terms and its legislative history. *Richbourg Motor Co.* vs. *U. S., supra; Commercial Credit Co.* vs. *U. S.* (C. C. A. 5), No. 6221, decided December 2, 1931, — Fed. (2) —; *United States* vs. *One Ford Coupé*, 272 U. S. 321, 71 L. Ed. 279, 47 A. L. R. 1025.

SECOND. The dominant character of the enterprise in which the vehicle is engaged when captured, to be deduced from the facts of each case, is the controlling test in determining the appropriate procedural statute. *U. S.* vs. *One Ford Coupé*, 272 U. S. 321, 71 L. Ed. 279, 47 A. L. R. 1025; *Two Ford Coupés* vs. *U. S.* (C. C. A. 5), No. 6008, decided November 10, 1931, — Fed. (2) —. As was said by way of illustration in the *Richbourg Motor case, supra*, "with the enactment of prohibition there can be few cases of illegal transportation which do not involve the concealment of non-tax-paid liquor." On the other hand, as was said in *U. S.* vs. *One Reo Coupé*, 46 Fed. (2) 815, "it is difficult to conceive of any case of smuggling where the element of transportation would not have been at some time present."

THIRD. If the paramount purpose of the enterprise in which the vehicle is presently engaged when captured, is to move the situs of the liquor from one place to another, for which purpose the vehicle is primarily in use as a conveyance only, the dominant character of the enterprise is transportation, and it is the mandatory duty of the United States to proceed under Section 26 of the National Prohibition Act, 27 U. S. C. A. 40. That section, in the circumstances last mentioned, furnishes the exclusive remedy for forfeiture, a condition precedent to which is the conviction of the offending person under the National Prohibition Act. This is true even though the liquor in question has an antecedent history as duty or tax un-paid liquor, imported or manufactured contrary to the customs or revenue laws above mentioned, and although there is concealment incidental to the transportation. *Richbourg Motor Co.* vs. *U. S., supra; U. S.* vs. *One Chevrolet,* 21 Fed. (2) 477, affirmed, 25 Fed. (2) 238; *U. S.* vs. *One Studebaker,* 45 Fed. (2) 430; *Commercial Credit Co.* vs. *U. S.* (C. C. A. 5), No. 6221, — Fed. (2) —. In the latter case the liquors were clearly of foreign origin and unlawfully imported, but importation had been fully accomplished and pure transportation undertaken prior to capture, so it was held that the forfeiture must proceed under Section 26, National Prohibition Act. Inability, due to circumstances, to prosecute the offender under the National Prohibition Act, may not be fatal to a libel against the vehicle under the customs or revenue laws, if the facts warrant such action. *Commercial Credit Co.* vs. *U. S.*, just cited; *U. S.* vs. *Chevrolet Truck,* 30 Fed. (2d) 830.

FOURTH. If the person in possession of the vehicle has been convicted of unlawful transportation under the National Prohibition Act, Section 26 of that Act (27 U. S. C. A. 40) mandatorily requires that the forfeiture proceed under that section, precluding a resort to the forfeiture provisions of either the customs laws or the revenue laws. *Port Gardner Inv. Co.* vs. *U. S.*, 272 U. S. 564, 71 L. Ed. 412; *Commercial Credit Co.* vs. *U. S*, 276 U. S. 226, 72 L. Ed. 541; *Commercial Credit Co.* vs. *U. S.* (C. C. A. 5), *supra; U. S.* vs. *One Ford Coupé,* 43 Fed. (2d) 212.

FIFTH. If the enterprise upon which the vehicle is presently engaged when captured is essentially the unlawful importation of liquor, or the unlawful facilitation or concealment of smuggled liquor, and the enterprise has not lost its character as such, a libel against the vehicle involved in such enterprise may be grounded upon Secs. 3061, 3062, Rev. Stat. (19 U. S. C. A. 482, 483). If there has been mere incidental and subordinate transportation solely in furtherance of such concealment, or in facilitation of the smuggling, and as an element thereof, as distinguished from transportation for other purposes, such incidental and subordinate facilitating transportation will not defeat a libel under the customs laws just mentioned, provided the enterprise still retains its primary and dominant character as an unlawful importation. In order, however, to prevail under the customs statutes, the Government must bring its case wholly and fairly within those statutes. *U. S.* vs. *Cahill,* 13 Fed. (2) 83; *U. S.* vs. *One Reo Coupé,* 46 Fed. (2d) 815; *U. S.* vs. *One Reo Sedan,* 39 Fed. (2) 120; see also as to vessels

Alkane vs. *U. S.*, 39 Fed. (2) 62, certiorari denied 281 U. S. 768, 74 L. Ed. 1175; *The Pilot*, 45 Fed. (2) 491. The same determinative principles would also apply in cases of forfeiture brought under the revenue laws, Sec. 3450, Rev. Stat. (26 U. S. C. A. 1181), where the dominant character of the enterprise is the removal, deposit or concealment of liquor with intent to deprive the United States of the tax thereon imposed by the revenue laws.

See also with reference to the applicability of Sec. 3450, Rev. Stat., where the transportation of narcotics and other contraband is involved, *U. S.* vs. *Mangano*, 299 Fed. 492.

It is conceded that the liquors here in question are of foreign origin, but how recently as to the time of capture is not shown. There is nothing to connect the vehicle with the importation, nor with the subsequent concealment, except the bare circumstance that it was proceeding northward on an extensively travelled public highway, about three or four miles distant from the coast, with imported liquors aboard it. Standing alone, that circumstance is insufficient to connect the vehicle with the importation. *Commercial Credit Co.* vs. *U. S.*, *supra*.

Although the liquors were probably unlawfully imported originally, and were tax and duty unpaid, the paramount and dominant character of the enterprise, when the vehicle was captured, was not concealment but was pure transportation, to which concealment was merely incidental. It is clearly a case in which a person was "discovered in the act of transporting" in contemplation of Sec. 26,

N. P. A., as interpreted in the *Richbourg Motor Co. case, supra.*

The fact that the driver pleaded guilty to an offense under the customs laws does not, standing alone, authorize a forfeiture under those laws, since the facts otherwise show that the vehicle was engaged in pure transportation. *U. S.* vs. *One Chevrolet,* 21 Fed. (2) 477, affirmed 25 Fed. (2) 238.

The libel is dismissed, and the vehicle awarded to the claimant.

U. S. GOVERNMENT PRINTING OFFICE: 1932

FILE COPY

No. 734

In the Supreme Court of the United States

OCTOBER TERM, 1951

UNITED STATES OF AMERICA

v.

COMMERCIAL CREDIT COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The District Court's opinion in one of the three cases here involved (R. 47–50) is reported in 46 F. (2d) 171. No opinion was filed by the District Court in the other two cases. The opinion of the Circuit Court of Appeals in a consolidated appeal involving all three cases (R. 73–75) is reported in 53 F. (2d) 977.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 2, 1931. (R. 76.) The pe-

tition for certiorari was filed February 26, 1932, and was granted March 21, 1932. Jurisdiction to issue the writ is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether Section 26, Title II, of the National Prohibition Act provides the exclusive method for the forfeiture of a vehicle seized by customs officers while being used illegally in concealing and transporting intoxicating liquor imported in violation of Sections 3061 and 3062 of the Revised Statutes.

STATUTES INVOLVED

Sections 3061 and 3062 of the Revised Statutes and Section 26, Title II, of the National Prohibition Act, are set forth in the Appendix, pp. 10–13, *infra*. Other relevant statutes are set forth in the appendix to the brief for the United States in *General Motors Acceptance Corporation* v. *United States*, No. 574, present term, which case is being argued immediately prior to the instant case.

STATEMENT

Three vehicles, two De Soto Coupes and one Farge Truck, were separately libelled by the United States in the District Court for the Southern District of Texas for alleged violation of Sections 3061–3062 of the Revised Statutes. The libels were similar in character, and in each it was charged that the vehicle was seized while being used in conceal-

ing and transporting intoxicating liquors which had lately theretofore been unlawfully imported into the United States. (R. 6, 35, 56.)

In each case the respondent intervened as a claimant setting up a lien interest in the seized property. Its answers in all three cases were substantially identical. (R. 7, 36, 58.) In each it pleaded the bona fide character of its lien, made a formal denial of the offense as charged, and then, by way of stating grounds for the dismissal of the libel, averred that the attached vehicle was seized in the act of illegally transporting intoxicating liquor in violation of the National Prohibition Act, and that the Government's exclusive right of forfeiture against the vehicle was that defined in Section 26 of that Act.

Jury trials were duly waived in writing (R. 18, 46, 69) and the facts were found by the court. (R. 13, 41, 63.) The court found in each case that the vehicle had been seized while transporting intoxicating liquor which had been illegally imported into the United States. It also found as a fact that the liens of the respondent were obtained in good faith, but it rejected the respondent's contention that the Government's exclusive remedy was that given by Section 26, Title II, of the National Prohibition Act, and entered judgments forfeiting the three cars. (R. 18, 50, 69.)

The respondent's appeals in the three cases were consolidated in the Circuit Court of Appeals pursuant to stipulation, and the cases docketed and

considered as a single case. (R. 21–22.) That court held that the Government's exclusive right of action against the cars was that declared in Section 26, Title II, of the National Prohibition Act, and reversed the judgments of the District Court and remanded the cases with directions to dismiss the libels without prejudice. (R. 76.)

SPECIFICATION OF ERROR

The Circuit Court of Appeals erred in reversing the judgments of the District Court and in holding that Section 26, Title II, of the National Prohibition Act provides the exclusive remedy for the forfeiture of a vehicle which is seized by customs officers while being used for the concealment and transportation of intoxicating liquors illegally imported in violation of Sections 3061 and 3062 of the Revised Statutes.

ARGUMENT

This case has been set for argument following *General Motors Acceptance Corporation* v. *United States,* No. 574, present term, wherein the principal question involved is substantially the same as that here presented. The argument of the Government in that case is applicable to this case and accordingly we will not repeat it here, but respectfully refer the Court to Points I and II of the brief for the United States in No. 574.

There are certain differences of fact between the instant case and the *General Motors Acceptance Corporation* case, but we submit that these differences do not change the applicable legal principles.

In No. 574 all the vehicles involved were seized by customs officers at regular customs inspection stations shortly after they had been observed crossing the border with the intoxicating liquor which they were found to contain. It is clear that the vehicles had been used shortly before they were seized in the unlawful importation of liquor.

In the instant case the vehicles were seized by customs officials while in the act of transporting and concealing intoxicating liquor which had been smuggled illegally into the United States, but it does not appear that the seized vehicles were used by the drivers in the actual importation of liquor into the United States. Moreover, in the instant case the vehicles were seized at considerable distances from the international boundary line, while in No. 574 the vehicles involved were seized near the border at regular customs stopping places.[1]

---

[1] The facts concerning the seizures of the three vehicles involved in the instant case are as follows:

First Case: United States of America v. *One De Soto Coupe.*

This vehicle was seized by a United States custom officer and other officers about midnight on October 29, 1930, in Brooks County, Texas, while being driven by its owner, one Lewis, and while laden with a large quantity of illegally imported liquors. (R. 13, 14.) When halted it was travelling away from the border. So far as can be determined from the record, the place of seizure was 70 or 80 miles from the international boundary. (R. 15.) Upon his arrest Lewis, the driver, stated that he had bought the liquor in Mexico, and that he had arranged to have it delivered to the American

The facts in each of the three cases here involved clearly establish an offense under Sections 3061 and 3062 of the Revised Statutes, which declare that vehicles used in conveying merchandise which has been illegally imported shall be forfeited. Those sections are not limited in any way by geographical considerations. Nor are they limited in application solely to vehicles which have participated directly in the act of illegal importation; they clearly

---

side of the Rio Grande River and there loaded into his car. (R. 14.) The liquor thus obtained was in the car when it was stopped and seized by the Federal officers. (R. 15.)

Second Case: United States of America v. *One Fargo Truck, etc.*

The Fargo Truck was captured by customs officers early on the morning of March 20, 1930, in Webb County, Texas, while being driven by one Brazil. (R. 42.) It was travelling at the time on a highway known as the Mines Road, which was commonly used by liquor runners, and it contained a large cargo of illegally imported liquor. The point where the truck was seized was about one mile from the Rio Grande River and about 22 miles from the town of Laredo, Texas. (R. 42, 43.)

Third Case: United States of America v. *One De Soto Coupe.*

This vehicle was captured about midnight on September 17, 1930, by customs officers, in Brooks County, Texas, at a point 70 or 80 miles from the Mexican border. (R. 64, 65.) When seized it was laden with a large quantity of alcohol, whiskey, and beer, and was being driven by one Young, its owner. Young told the seizing officers that he had gone into Mexico to purchase liquor, that he had left his automobile in a garage in Texas, and that the liquor which he had purchased in Mexico had been brought across the border by Mexican smugglers and loaded into his car on the Texas side. This was the cargo which the seized vehicle contained. (R. 65.)

apply not only to vehicles which are used as agencies for illegal importation, but also to those which may not have imported but which conceal and convey illegally imported goods after importation.[2] *United States v. Cahill*, 13 F. (2d) 83, 85 (C. C. A. 1st).

Moreover, it seems clear that the provisions of Sections 3061–3062 for searches and seizures anywhere in the United States of vehicles suspected of containing illegally imported merchandise are germane to the purpose of the customs laws—a purpose to control effectively the introduction of foreign merchandise into the commerce of the United States. It is too much to expect Federal officers to stop all illegal enterprises of smuggling character immediately at the border. Congress, therefore, did not leave the customs laws inoperative or impotent in cases where there was a successful evasion of customs supervision at that point.

We contend further that the degree of culpability of the offending vehicle is not lessened by the fact that it did not bring into the United States the illegally imported merchandise which it was

[2] Light is thrown upon the purpose and effect of Sections 3061 and 3062 of the Revised Statutes by comparing them with their related criminal section, Section 593 (b) of the Tariff Acts of 1922 and 1930, respectively (formerly R. S. 3082). As was pointed out in our brief in No. 574, these statutes comprehend the same acts. In one instance, consequences *in rem* are imposed; in the other, consequences *in personam*. The statutory provisions are alike in comprehending more than the mere act of importation. They make it an offense, civil and criminal, not only to import forbidden merchandise but also to convey and trade in such merchandise after its illegal entry.

found to be concealing or conveying. This is particularly apparent under the facts of the first and third cases (See footnote 1, p. 5, 6, *supra*), in which apparently the vehicles did not actually take part in the act of importation because of the practical obstacle presented by the Rio Grande River.

The seizures of the three vehicles here involved by the customs officers were acts which were a proper and integral part of the extensive administrative functions performed by the Federal customs service since the beginning of the Federal Government. The officers were primarily concerned with enforcing the customs laws. The fact that the illegally imported merchandise happened to be intoxicating liquor was merely accidental. The vehicles would have been been equally subject to forfeiture under Sections 3061–3062 had they contained any other kind of merchandise which had been illegally imported.

The situation here is unlike that presented in the *Richbourg* case where the Government was attempting to supplement the enforcement of the liquor transportation provisions of the National Prohibition Act by using an earlier and more rigorous statute which was never intended for such a purpose. The internal revenue statute there involved was enacted for the exclusive purpose of enforcing the collection of a tax on *domestic* liquor. In the instant case no subterfuge can be asserted; the Government is invoking a statute for the precise purpose for which the statute was intended. Section 26 of the National Prohibition Act

can be given full and complete effect without permitting it to supersede another equally mandatory and important statute which occupies a field distinctly its own.

A situation similar to that here involved was before this Court in *Callahan* v. *United States*, No. 576, decided April 11, 1932, in which case it was held that a person may be prosecuted under Section 593 (b) of the Tariff Act of 1922 for unlawfully importing intoxicating liquor notwithstanding that such act constituted an offense under the National Prohibition Act and was made punishable thereby.

CONCLUSION

We see no valid ground for distinguishing between the vehicles involved in the instant cases and those involved in No. 574. Accordingly, we submit that the Circuit Court of Appeals erred in reversing the decrees of forfeiture entered against the several automobiles in the District Court, and that the judgment of the Circuit Court of Appeals should be reversed.

Respectfully submitted.

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APRIL, 1932.

APPENDIX

Sections 3061 and 3062 of the Revised Statutes (U. S. C., Title 19, Secs. 482 and 483)—

SEC. 3061. Any of the officers or persons authorized to board or search vessels may stop, search, and examine, as well without as within their respective districts, any vehicle, beast, or person, on which or whom he or they shall suspect there is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law, whether by the person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise, and to search any trunk or envelope, wherever found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law; and if any such officer or other person so authorized shall find any merchandise on or about any such vehicle, beast, or person, or in any such trunk or envelope, which he shall have reasonable cause to believe is subject to duty, or to have been unlawfully introduced into the United States, whether by the person in possession or charge, or by, in, or upon such vehicle, beast, or otherwise, he shall seize and secure the same for trial.

SEC. 3062. Every such vehicle and beast, or either, together with teams or other mo-

tive-power used in conveying, drawing, or propelling such vehicle or merchandise, and all other appurtenances, including trunks, envelopes, covers, and all means of concealment, and all the equipage, trappings, and other appurtenances of such beast, team, or vehicle, shall be subject to seizure and forfeiture. If any person who may be driving or conducting, or in charge of any such carriage or vehicle or beast, or any person traveling, shall willfully refuse to stop and allow search and examination to be made as herein provided, when required so to do by any authorized person, he shall be punishable by a fine of not more than one thousand dollars, nor less than fifty dollars.

Section 26, Title II, of the National Prohibition Act (Act of October 28, 1919, c. 85, Sec. 26, 41 Stat. 305, 315; U. S. C., Title 27, Sec. 40)—

When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law. Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof. Such officer shall at once proceed against the

person arrested under the provisions of this title in any court having competent jurisdiction; but the said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide the judgment of the court. The court upon conviction of the person so arrested shall order the liquor destroyed, and unless good cause to the contrary is shown by the owner, shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure, and the cost of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise at said hearing or in other proceeding brought for said purpose, as being bona fide and as having been created without the lienor having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor, and shall pay the balance of the proceeds into the Treasury of the United States as miscellaneous receipts. All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property. If, however, no one shall be found claiming the team, vehicle, water or air craft, or automobile, the taking of the same, with a de-

scription thereof, shall be advertised in some newspaper published in the city or county where taken or if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if no claimant shall appear within ten days after the last publication of the advertisement, the property shall be sold and the proceeds after deducting the expenses and costs shall be paid into the Treasury of the United States as miscellaneous receipts.

U. S. GOVERNMENT PRINTING OFFICE: 1922

No. 734.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

UNITED STATES OF AMERICA,
Petitioner,

v.

COMMERCIAL CREDIT COMPANY, INC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

MEMORANDUM FOR RESPONDENT.

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IN THE

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UNITED STATES OF AMERICA,
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v.

COMMERCIAL CREDIT COMPANY, INC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

The Respondent does not oppose the petition for a writ of certiorari in this case. However, it believes that the question presented to the Circuit Court of Appeals, the decision of which is now sought to be reversed, is better stated as follows:

> Is it mandatory under Section 26, Title II, of the National Prohibition Act (27 USCA 40; Chapter

85, Act of Oct. 28, 1919; 41 Stat. 315) that an automobile used to unlawfully transport intoxicating beverage liquor within the United States be seized and proceeded against under said statute, under which the rights of innocent lienors are protected, or may such an automobile be proceeded against and forfeited under Sections 3061 and 3062 of the Revised Statutes (19 USCA 482, 483) for the unlawful importation of liquor, under which statute the rights of innocent lienors are disregarded and absolutely forfeited, although the automobile was not actually used in the act of importation.

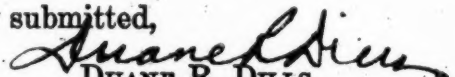
The same question, in somewhat different form, is at present pending before this Court in the case of General Motors Acceptance Corporation *v.* United States, No. 574, on certificate from the Circuit Court of Appeals for the Ninth Circuit. However, it should be noted that each of the four vehicles there concerned "was observed crossing the international boundary line from Mexico." (See second paragraph of certificate of Circuit Court of Appeals, Ninth Circuit.) In the *instant* case, on the other hand, none of the vehicles were used in the actual importation, each was loaded with the liquor in the *United States,* and all were discovered and seized while actually engaged in the act of *transportation.*

The many divergent and conflicting opinions of the various District and Circuit Courts are well annotated in "Appendix B" of Petitioner's petition, and are also listed in the aforementioned certificate of the Circuit Court of Appeals for the Ninth Circuit. We submit that they are so contradictory and incompatible, and have caused such

confusion among Bench, Bar, litigants and counsel, that an early interpretation of the statutes involved by this Honorable Court is not only desirable, but most necessary.

Dated at New York, the 5th day of March, 1932.

Respectfully submitted,



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OCTOBER TERM, 1931

No. 734.

UNITED STATES OF AMERICA,
Petitioner,

v.

COMMERCIAL CREDIT COMPANY, INC.,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1931.

UNITED STATES OF AMERICA, Petitioner, *vs.* COMMERCIAL CREDIT COMPANY, INC., Respondent.	No. 734.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR RESPONDENT.

Decision Below.

The decision of the United States Circuit Court of Appeals in this case is reported in Commercial Credit Co., Inc. *v.* United States, 53 Fed. (2d) 977. The decision of the United States District Court for the Southern District of Texas may be found in United States *v.* One Fargo Truck, 46 Fed. (2d) 171.

Question at Issue.

The question presented is whether or not it is mandatory under Section 26, Title II, of the National Prohibition Act (27 USCA 40; Chapter 85, Act of Oct. 28, 1919; 41 Stat. 315)

that an automobile used to unlawfully transport intoxicating beverage liquor (although *not* actually used in the *act of importation*) be seized and proceeded against under said statute, under which the rights of innocent lienors are protected, as held by the Circuit Court, or whether such an automobile may be proceeded against and forfeited under Sections 3061 and 3062 of the Revised Statutes (19 USCA 482, 483) for the unlawful importation of liquor, under which statute the rights of innocent lienors are disregarded and absolutely forfeited, as held by the District Court.

Preliminary Statement.

The three automobiles concerned herein were seized on different occasions, in different places, and from three different persons. *None* of them had been used in the *act of importation,* and *all* were seized while engaged in the *act of transportation.* The United States of America instituted separate forfeiture proceedings against each in the United States District Court for the Southern District of Texas, for the alleged violation of 19 USCA 482, 483 (Sections 3061 and 3062, R. S.). Commercial Credit Company, Inc., a corporation organized under the laws of the State of Texas, intervened in the proceedings, made answer to each of the three libels, moved that they be dismissed, and prayed that the automobiles be returned to it. Such prayers were denied, and the three cars ordered forfeited. Commercial Credit Company, Inc., the intervenor and present respondent, thereupon prosecuted an appeal to the United States Circuit Court of Appeals, the three causes being consolidated (R. 16). The judgments of forfeiture were *reversed* by that Court, and the United States of America, the present petitioner, thereupon sued out a writ of certiorari. Its

petition was granted by order of this Court filed on the 21st day of March, 1932 (R. 48).

Statutes Involved.

27 USCA 40 (Section 26, Title II, National Prohibition Act):

> "*Unlawful transportation of liquor; seizure and destruction of liquor and sale of vehicle.* When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law. Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested under the provisions of this chapter in any court having competent jurisdiction; but the said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide the judgment of the court. The court upon conviction of the person so arrested shall order the liquor destroyed, and unless good cause to the contrary is shown by the owner, shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the

fee for the seizure, and the cost of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise at said hearing or in other proceeding brought for said purpose, as being bona fide and as having been created without the lienor having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor, and shall pay the balance of the proceeds into the Treasury of the United States as miscellaneous receipts. All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property. If, however, no one shall be found claiming the team, vehicle, water or air craft, or automobile, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken or if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if no claimant shall appear within ten days after the last publication of the advertisement, the property shall be sold and the proceeds after deducting the expenses and costs shall be paid into the Treasury of the United States as miscellaneous receipts. (Oct. 28, 1919, c. 85, Title II, §26, 41 Stat. 315.)"

27 USCA 12 (Section 3, Title II, National Prohibition Act):

"*Manufacture, sale, transportation, importation or exportation, delivery, furnishing, or possessing intoxicating liquors prohibited; exceptions.* No person shall manufacture, sell, barter, transport, *import*, export, deliver, furnish or possess any intoxicating liquor except as authorized in this chapter, and all

the provisions of this chapter shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented. * * *" (Italics ours, except in caption.)

27 USCA 3 (Section 5, Willis-Campbell Act, November 23, 1921, c. 134, 42 Stat. 222):

"*Effect on existing legislation.* All laws in regard to the manufacture and taxation of and traffic in intoxicating liquor, and all penalties for violations of such laws that were in force on October 28, 1919, shall be and continue in force, as to both beverage and non-beverage liquor, except such provisions of such laws as are directly in conflict with any provision of this title; but if any act is a violation of any of such laws and also of this title, a conviction for such act or offense under one shall be a bar to prosecution therefor under the other. (Nov. 23, 1921, c. 134, §5, 42 Stat. 223.)"

19 USCA 482 (Section 3061, R. S.,—Customs Law):

"*Search of vehicles and persons.* Any of the officers or persons authorized to board or search vessels may stop, search, and examine, as well without as within their respective districts, any vehicle, beast, or person, on which or whom he or they shall suspect there is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law, whether by the person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise, and to search any trunk or envelope, wherever found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law; and if any such officer or other person so authorized shall find any merchandise on or about any such vehicle, beast, or person, or in any such trunk or envelope, which he

shall have reasonable cause to believe is subject to duty, or to have been unlawfully introduced into the United States, whether by the person in possession or charge, or by, in, or upon such vehicle, beast, or otherwise, he shall seize and secure the same for trial. (R. S. §3061.)"

19 USCA 483 (Section 3062, R. S.,—Customs Law):

"'*Forfeitures.* Every such vehicle and beast, or either, together with teams or other motive power used in conveying, drawing, or propelling such vehicle or merchandise, and all other appurtenances, including trunks, envelopes, covers, and all means of concealment, and all the equipage, trappings, and other appurtenances of such beast, team, or vehicle, shall be subject to seizure and forfeiture. If any person who may be driving or conducting, or in charge of any such carriage or vehicle or beast, or any person traveling, shall wilfully refuse to stop and allow search and examination to be made as herein provided, when required so to do by any authorized person, he shall be punishable by a fine of not more than $1,000, nor less than $50. (R. S. §3062.)"

Statement of Facts.

The facts in the three cases at Bar are set out in the District Court's *Findings of fact and conclusions of law* (R. 8-11; 24-27; and 39-42), which, by stipulation of counsel (R. 14), were used in lieu of bills of exception or other statements of evidence. They may be summarized as follows:

1. De Soto Coupe seized from T. W. Lewis.

This car was purchased by one T. W. Lewis "from the Perry Motor Company of Dallas, Texas, a reputable auto-

mobile dealer" (R. 9), "under a chattel mortgage contract of sale, pursuant to which said dealer retained a purchase money lien upon such car until the purchase price thereof should have been duly paid" (R. 9). Both the mortgage and the note given by Lewis in connection therewith were then, "for a valuable consideration, sold to the Commercial Credit Company, Inc., and it (the appellant) is the owner and holder of a valid lien upon such automobile, on which there is at this time an unpaid balance of Seven Hundred and Sixty-five and 40/100 Dollars ($765.40)" (R. 10).

The District Court found (R. 10) that "such lien is a purchase money chattel mortgage lien and is bona fide; that it was created by the dealer in good faith, without any knowledge of any facts which would put the dealer upon notice that such automobile might be used in violation of any laws of the State of Texas, or of the United States"; that the appellant "acted in good faith in buying such chattel mortgaged lien; that it had no knowledge of any facts indicating, or tending to indicate, that the purchaser would use such automobile in violation of any Federal or State statute"; that the seizure was incurred "without any intention on the part of the Commercial Credit Company, Inc., to defraud the revenue or to violate the law"; and that it "had no notice that said automobile was being used for illegal purposes and knew of no facts or circumstances which would reasonably or otherwise lead them to believe that the automobile was being so used". It was found further (R. 10) that the appellant was the "legal owner of the chattel mortgage" on the car concerned; that no payment had been made thereon since October 29, 1930, and that the appellant "is under the terms of such chattel mortgage entitled to the immediate and exclusive possession of said automobile

except for the claims of the Government", as asserted in the libel proceedings.

The car was seized on the evening of October 29, 1930 (R. 8), while "*traveling* north" (R. 9) on a public highway. "The officers *stopped* the car on the highway" near Encino, Brooks County, State of Texas. (In passing, we respectfully request the Court to take judicial notice of the geographical facts that the town of Encino is over sixty miles from the Mexican border, and that no part of Brooks County lies adjacent to foreign territory.) The Court expressly found that, "*The car was being driven along the highway by T. W. Lewis with the alcohol and liquor on it at the time the car was stopped by the officers*" (R. 9). Upon searching the car, the officers found certain alcohol and liquor which "were manufactured in Mexico and smuggled into the United States without the payment of duty thereon and without being declared to United States customs officers".

The only evidence of the "importation", besides that which indicated that the containers bore what purported to be foreign labels, showed that "T. W. Lewis, the driver, admitted that he had bought the liquor in Reynosa, Mexico, at a wholesale house and arranged to have it *delivered on the American* side of the Rio Grande, and loaded it on his car at a point south of McAllen, Texas, between the town of Hidalgo and McAllen, Texas" (R. 9). *It thus appears that the automobile was never on foreign soil; that its driver did not use it in the actual "importation" of any merchandise; and that the importation of the alcohol and liquor described in the libel* (R. 4) *was fully completed before such merchandise was placed in the car.*

2. Fargo Truck seized from John Paul Brazil.

This truck was purchased by one Albert Jackson under the same circumstances as the De Soto Coupe, *supra*, the purchase money chattel mortgage being then sold to appellant for a valuable consideration, just as in that case. See R. 26. The District Court found that the chattel mortgage had been created in good faith, that the unpaid balance owing thereon was $847.30, that both the dealer and appellant were wholly innocent, and that, except for the claim of the United States, appellant was entitled to the possession of the chattel. R. 26, 27.

The truck was seized early in the morning on March 20, 1930, while traveling on a public highway in Webb County, State of Texas, about one mile north of the Rio Grande River. R. 24. The District Court found as a fact that it "was being *driven* * * * at the time (it) was stopped" by the officers. R. 26. There was no finding as to the importation of the liquor found in it, except that the containers bore genuine foreign labels. Furthermore, *there was no finding that the truck had ever been on foreign soil, or that it had been used in the "importation" of liquor or anything else.*

3. De Soto Coupe seized from A. D. Young.

The facts as to the purchase of this car are the same as in the other two cases, appellant being the innocent holder of a bona-fide purchase money chattel mortgage thereon. R. 41, 42. The Court below found that the unpaid balance due on appellant's lien was $832.08, and that, except for the claim of the Government, appellant was "entitled to the immediate and exclusive possession" of the car. R. 41, 42.

The seizure took place late on the evening of September 17, 1930, on a public highway in Brooks County, State of

Texas, which County, as hereinabove noted, does *not* border on any foreign territory. R. 39, 40. The officer "discovered this De Soto Coupe being *driven* along such highway". The car "*approached* the said officer and upon being flagged by the officer the driver thereof *stopped*" it and, upon examination, found it was carrying liquor. R. 40. The finding as to the importation was that the liquor had been smuggled into the United States by Mexican smugglers, and then loaded into the car in *Texas*. R. 40. Furthermore, the District Court expressly found that "*at the time of the arrest the respondent vehicle was being used by Young for the purpose of* TRANSPORTING the merchandise seized therein". R. 40.

POINT ONE.

Sections 3061 and 3062 Revised Statutes were repealed by the National Prohibition Act and were not re-enacted by the Willis-Campbell Act.

The cases at Bar have to do with the protection of the rights of innocent lienors and have no relation to the punishment of the culpable for violation of the Customs Laws. It is recognized that this Court has had in mind the protection of the innocent in all of its prior decisions requiring the application of Section 26 of the National Prohibition Act. The District Court for the Eastern District of New York in *The Standard Coaster,* 55 Fed. (2d) 306, at 307, says:

> "* * * It should be remembered that Mr. Justice Stone in his decision in the Richbourg Case was ruling and writing with the rights of innocent lienors in mind. He and the Supreme Court were not announcing a rule of procedure that would enable the guilty

to escape, but one that would protect the rights of the innocent. In this decision, occupying eight pages, the rights of innocent lienors are mentioned eleven times * * *."

Admittedly, under *Callahan* v. *United States,* Case No. 576, decided by this Court on April 11, 1932, the National Prohibition Act does not supersede the Tariff Laws insofar as the criminal actually violating the importation law is concerned; but where the rights of *innocent* parties are involved, the Court will be disposed to give effect to those provisions of law which *protect* the rights of the innocent, rather than to give an unreasonable application to laws which would *forfeit* the rights of the innocent. The respondent asks that this Court give effect to the express intention of Congress that the rights of innocent parties be protected where transportation of intoxicating liquor is involved. Section 26, Title II, of the National Prohibition Act (27 USCA 40) specifically protects the rights of innocent lienors, while Sections 3061 and 3062 Revised Statutes (19 USCA 482, 483) do not safeguard the rights of innocent lienors. "It is true that executive clemency may remit the forfeiture in favor of innocent persons (19 USCA secs. 520, 532), but mitigation by grace is not the equivalent of statutory immunity from forfeiture". *United States* v. *Sebastopol* (C. C. A. 2), not yet reported but now case No. 811 at Bar, as *General Import & Export Co.* v. *United States.* This is so particularly since the decision of the bureaucratic executive is not subject to review. *United States ex rel. Walter E. Heller & Co.* v. *Mellon, etc.,* 40 Fed. (2d) 808, 810 (App. D. C.—1930), certiorari denied 281 U. S. 766.

The reasoning applied in holding that the mandatory features of Section 26 of the National Prohibition Act must

be applied instead of Section 3450 Revised Statutes in the taxation cases, is equally applicable to Sections 3061 and 3062 Revised Statutes in these customs cases. They are companion statutes. Sections 3061, 3062 were enacted on July 18, 1866, (c. 184, Section 14, 14 Stat. 151), and Section 3450 was enacted July 13, 1866, (c. 201, Section 3, 14 Stat. 178). They have always been considered as on a par, one operating in the field of taxation, and the other in the field of customs.

United States v. *One Mack Auto Truck* (C. C. A. 2—1925), 4 Fed. (2d) 923;
United States v. *Almeida* (C. C. A. 1—1925), 9 Fed. (2d) 15, 16;
United States v. *One Ford Coupé* (S. D. Fla.—1930), 43 Fed. (2d) 212, 214.

Unless Sections 3061 and 3062 Revised Statutes were re-enacted by the adoption of the Willis-Campbell Act, 27 USCA 3 (42 Stat. 222, 223), they stand repealed by the adoption of the National Prohibition Act. *United States* v. *Yuginovich*, 256 U. S. 450; *United States* v. *Federal Insurance Co.* (C. C. A. 6—1922), 284 Fed. 821; *United States* v. *One Mack Auto Truck* (C. C. A. 2—1925), 4 Fed. (2d) 923. The Willis-Campbell Act did not re-enact Sections 3061 and 3062 of the Revised Statutes because they are in direct conflict with the provisions of the National Prohibition Act relative to transportation in customs cases in that they provide for absolute forfeiture of the rights of the innocent, while the National Prohibition Act protects the innocent. *United States* v. *One Packard Motor Truck* (1922, D. C., E. D. Mich.), 284 Fed. 394; *United States* v. *One Studebaker Automobile* (1930, D. C. Ariz.), 45 Fed. (2d)

430; *United States* v. *One Ford Coupé* (S. D. Fla.—1930), 43 Fed. (2d) 212. Transportation is necessarily involved in importation, just as much as concealment was involved in transportation, in *Richbourg Motor Company* v. *United States,* 281 U. S. 528. Since transportation takes place in the custom cases as it did in the taxation cases, it necessarily follows that Sections 3061 and 3062 are as much in direct conflict with Section 26 of the National Prohibition Act as was their companion statute Section 3450 in *Port Gardiner Investment Company* v. *United States,* 272 U. S. 564, *Commercial Credit Company* v. *United States,* 276 U. S. 226, and *Richbourg Motor Company* v. *United States,* 281 U. S. 528. In those cases a tax, as defined in *United States* v. *One Ford Coupé,* 272 U. S. 321, was payable in respect to the liquor being transported, just as a customs duty was payable in respect to the liquor being transported in the cases at Bar. This Court did not say or presume to say in those taxation seizure cases that the Government could not elect to prosecute the person defrauding the Government of a tax under provisions of law other than the National Prohibition Act, but this Court did hold that if the Government proceeded against the vehicle, thereby jeopardizing the rights of the innocent, then it had no election, but that the *law* made the election. The reasoning of the Court with respect to Section 3450 being in direct conflict with Section 26 of the National Prohibition Act is equally applicable to our contention that Sections 3061 and 3062 Revised Statutes are in direct conflict with the National Prohibition Act; accordingly, where the rights of innocent parties are involved, and there is a transportation of liquor, it is mandatory that the procedure must be under the National Prohibition Act. Apparently

this was the intention at the time of the adoption of the National Prohibition Act, for the sponsor of that Act, in advocating the enactment of Section 26, declared on the floor of Congress that Section 26 was designed to protect the rights of innocent lienors and owners (see Congressional Record, 66th Congress, First Session, Volume 58, Part 3, page 2902, July 19, 1919). It likewise must have been intended to protect such rights where the *Customs Laws* were involved, because that Section was supposed to answer the critics who maintained that the rights of innocent parties were jeopardized. In Congressional Record, 66th Congress, First Session, Volume 58, Part 3, page 2904, July 19, 1919, we find that one of those critics said:

> "A man's chauffeur, driving an automobile worth $4,000, carries a quart of liquor *across the line* to sell it. The owner may be perfectly innocent; he may be a man of the highest morality. * * * The automobile is merely illustrative. It may be a steamship worth $100,000. It may be aircraft worth $20,000. *It may have mortgages and liens upon it. These amendments purport to take care of that feature,* but I do not think they do that very well." (Italics ours.)

There was no provision under the Tariff Laws wherein the rights of the innocent lienors in the cases at Bar *could* have been forfeited, and, therefore, the Government had to resort to Sections 3061 and 3062, which were companion sections to the old Section 3450 Revised Statutes, in order to inflict the unjust and unreasonable penalty of forfeiture upon the innocent lienors. Since Congress has not specifically said the Government could do so, it is submitted that this Court should not so read the law as to permit unjustifiable forfeiture of the rights of the innocent.

POINT TWO.

Transportation, not importation, was the dominating enterprise, and Sections 3061, 3062 Revised Statutes are not applicable.

The Circuit Court of Appeals for the Fifth Circuit, in the case at Bar, rested its decision upon the ground that the vehicles in question were used only in transportation. The court said:

> "The vehicles involved were used only in transportation within the United States, and carried intoxicating liquors alone, and the persons in charge were arrested and for aught that appears are guilty under the prohibition laws. No reason exists why the mandate of 27 U. S. C. 40 (sec. 26 N. P. A.) should not be followed out by the officers of the United States in their efforts to condemn the vehicles" (R. 47).

None of the vehicles in the cases at Bar were used in the "importation" of the liquor. They were all used in the transportation of the liquor within the boundaries of the United States after the importation had been completed. To this extent, the vehicles in this case are distinguished from the vehicles involved in *General Motors Acceptance Corporation* v. *United States,* No. 574 at Bar.

There were three vehicles involved in the case at Bar, for which three separate petitions were filed, and the findings of fact in all of them showed *transportation within the United States.* In respect to the De Soto Coupe, motor #ECK-10429E, "The officer stopped the car on the highway", and the liquor had been loaded into the car near

McAllen, Texas (R. 9). The liquor had been smuggled in from Mexico. In respect to the Fargo truck, serial #W-207-YS, the "truck was stopped on a public highway in Webb County": "At the time the truck was stopped by the border patrol inspectors it was being driven by John Paul Brazil", and "The above described truck was being driven along the Mines Road by John Paul Brazil with the smuggled alcohol and liquor on it at the time the truck was stopped by the border patrol inspectors" (R. 25 and 26). With respect to the third car, De Soto Coupe, serial #L-172-YW, the inspector "discovered this De Soto coupe being driven along such highway; * * * the car approached the said officer, and upon being flagged by the officer the driver thereof stopped the automobile, * * *". "* * * the car had been used *to transport* the merchandise from such point (in Texas) to the place of seizure", and "at the time of the arrest the respondent vehicle was being used by A. D. Young *for the purpose of transporting* the merchandise seized therein" (R. 40).

If sections 3061 and 3062, Revised Statutes, are still available to the Government for seizures and forfeitures for importation of intoxicating liquor (*contra* see our Point One), the question presents itself whether they are available when the specific vehicles are used for purposes of transportation of smuggled liquor *within* the United States as distinguished from importation of the liquor *into* the United States. The Fifth Circuit Court of Appeals in the case at Bar held, as above stated, that since transportation only was involved, the rights of the innocent lienors must be protected under the National Prohibition Act. The Fifth Cicruit is not alone in this view. The Seventh Circuit, prior to the decision of this court in the *Richbourg case*, had similarly held that in order that the vehicles should be forfeited under the Customs Laws, they must be used in

the specific act of importation. In *National Bond & Investment Co.* v. *United States* (C. C. A. 7—1925), 8 Fed. (2d) 942), Anderson, C. J., says:

> "It does not appear from this (stipulation of facts) that the coupé was used to bring the liquor into the United States, nor is there any evidence on the question of intent. There is no evidence whatever in the record upon which the court could have found that the coupé was used in bringing the liquor from Canada into the United States * * *. The use shown was in Paris, Ill., on or about August 22, 1924. * * * Intent to defraud the United States out of customs duties may be inferred when a conveyance is used to smuggle goods into the United States, but to warrant such inference it must be established that the conveyance was so used."

No case of forfeiture under Section 3061, 3062 has been found in any other circuit where the element of transportation has been established as a fact. In the cases in all the other circuits holding that the vehicle might be forfeited under the Customs Laws, the element of transportation was lacking or the cases were decided on some other ground.

United States *v.* Cahill (C. C. A. 1—1926), 13 Fed. (2d) 83;

United States *v.* One Reo Coupé Automobile (1931, D. C. Mass.), 46 Fed. (2d) 815;

United States *v.* One Lincoln Touring Car (1925, D. C., N. D. N. Y.), 11 Fed. (2d) 551;

United States *v.* One Packard Sedan (1926, D. C., S. D. Fla.), 14 Fed. (2d) 874;

United States *v.* One Reo Sedan (1930, D. C. Mass.), 39 Fed. (2d) 120;

United States *v.* One Nash Auto (1927, D. C. Mont.), 23 Fed. (2d) 126.

In determining what laws are available to the Government for forfeiture, consideration must be given to the dominating enterprise in which the vehicle is then being used. If the substantive offense is importation and the Customs Laws are available to the Government (unless our arguments under Point One are accepted), then forfeiture might be had under those laws; if the substantive offense is concealment with intent to defraud the Government of a tax, then forfeiture might be had under section 3450. (See majority opinion of Mr. Justice Brandeis in *United States* v. *One Ford Coupé*, 272 U. S. 321.) But if the dominating enterprise is transportation, then forfeiture must be under the provisions of section 26, National Prohibition Act. *Commercial Credit Company* v. *United States*, 276 U. S. 226; *Richbourg Motor Company* v. *United States*, 281 U. S. 528.

In the *Richbourg case*, this court recognizes that it was the protection of the rights of innocent parties that required giving effect to section 26 and prohibited the use of "other applicable statutes". (See *The Standard Coaster* (1932, D. C., E. D. N. Y.), 55 Fed. (2d), 306, at 307.) Mr. Justice Stone there says, at page 534:

> "If the purpose were the more general one of imposing on government officers the general duty to procure forfeiture at their election, either under §26 or any other applicable statute, most of the requirements of §26 might have been omitted."

In the *Richbourg case*, the driver had been arrested and convicted under section 3450 "for the removing and concealing spirits with intent to defraud the government of the tax". (281 U. S. 528, at p. 531.) In *Commercial Credit Company* v. *United States* (276 U. S. 226, at p. 229), the driver of the car was convicted of possession and the charge of transportation was dropped. Nevertheless, this Court in

the *Richbourg case* recognized that transportation was the dominating enterprise and said (281 U. S. 528, at p. 535): "* * * there can be few cases of illegal transportation which do not involve the concealment of nontax-paid liquor." And in *Commercial Credit Company* v. *United States,* this Court again recognized that transportation was the substantive offense, and that the possession was involved in and incidental to the transportation. (See 276 U. S. 226, at 232).

In *United States* v. *One Reo Coupé Automobile* (1931, D. C. Mass.), 46 Fed. (2d) 815, where the car was forfeited under the Customs Laws, the court holds that the importation in violation of the Customs Laws was the dominating enterprise, and in fact there was no evidence of transportation. The court there says, at page 818: "It is impossible to conceive of any case of smuggling where the element of transportation would not have been at some time present, but here the substantive crime was a violation of the customs laws", and further, at pages 818 and 819: "I still think it to be possible for the government to obtain forfeiture of a vehicle used in the smuggling of dutiable merchandise even if such merchandise is intoxicating liquor, *but the smuggling of the liquor, and not the transportation of it, must be the real offense,* * * *"*

District Judge Strum of the Southern District of Florida in the recent case of *United States* v. *One Buick Coupé* (1931, D. C., S. D. Fla.), 54 Fed. (2d) 800, says, at page 802:

> "The dominant character of the enterprise in which the vehicle is engaged when captured, to be deduced from the facts of each case, is the controlling test in determining the appropriate procedural statute."

* * * * * *

"If the paramount purpose of the enterprise in which the vehicle is presently engaged when captured, is to move the situs of the liquor from one place to another, for which purpose the vehicle is primarily in use as a conveyance only, the dominant character of the enterprise is transportation, and it is the mandatory duty of the United States to proceed under Section 26 of the National Prohibition Act."

* * * * * *

"The fact that the driver pleaded guilty to an offense under the customs laws does not, standing alone, authorize a forfeiture under those laws, since the facts otherwise show that the vehicle was engaged in pure transportation."

In all the cases at Bar the cars had never crossed the boundary line. They were always in Texas. The liquor was loaded upon them in Texas. They were used to transport the liquor within the State of Texas. Therefore, we have the dominant enterprise and the substantive offense clearly established as a transportation of intoxicating liquor and, under the prior decisions of this court, the forfeiture proceedings should have been brought under section 26 of the National Prohibition Act, thereby protecting the rights of the innocent lienors.

We cannot await the service of the Government's brief in preparing our brief, for these cases are now on the day calendar. We do not know what the Government will contend, but probably it will urge as it has in other courts, that Sections 602-604 of the Tariff Acts of 1922 and 1930 (19 USCA 1602-1604) are equally as mandatory as the provi-

sions under Section 26 of the National Prohibition Act. If such arguments are advanced, we respectfully call the Court's attention to the language of Section 604 (19 USCA 1604), which section requires the United States attorney to inquire into the facts of the cases reported to him, and if forfeiture has been incurred, "forthwith to cause the *proper proceedings* to be commenced and prosecuted." We submit that "proper proceedings" as intended by that statute would mean proceedings under Section 26 of the National Prohibition Act in the cases at Bar, since proceedings under that Act would protect the rights of the innocent, as Congress intended.

Conclusion.

It is difficult for those interested in the automobile industry to understand why the Government has so persistently sought to forfeit the rights of automobile dealers, finance companies and other innocent parties in the automobiles used in the transportation or importation of intoxicating liquor, and why, in the enforcement of national prohibition, recourse should be had to those harsh statutes which so unjustly penalize the innocent. At nearly every cross-road throughout the country will be found automobile dealers concerned with the threatened jeopardy of their rights in cars. Where dealers are negligent or culpable in selling cars to bootleggers, the National Prohibition Act does not protect them. It protects only the innocent. It has seemed to us that the Government has not followed the advice of the Chief Justice when in his address to the Federal Bar Association at Washington, D. C. on February 11, 1931, he said:

> "* * * The solicitors in the various departments may render * * * an important service in keeping down the volume of litigation by not attempting to force statutes to an extreme construction. * * * There is abundant opportunity for common sense even in administering laws. * * *"

Furthermore, it does not seem to us that the government has accepted the admonition in the dissenting opinion of Mr. Justice McReynolds, in *Carroll et al.* v. *United States,* 267 U. S. 132, where, at page 163, he says:

> "The damnable character of the 'bootlegger's' business should not close our eyes to the mischief which will surely follow any attempt to destroy it by unwarranted methods."

It has been difficult for most of the federal courts to accept the idea that the automobile has the power of complicity and guilt in the wrong. In *United States* v. *One Ford* (1927, D. C. Neb.), 21 Fed. (2d) 628, at 629, the court says this is due to the fact that:

> "The Mosaical law and certain practices among the Athenians are referred to for analogies, rather than any idea current since the Christian era."

Judge Learned Hand, in *Edwards* v. *The Motor Vessel K. 22845* (C. C. A. 2—1932), 55 Fed. (2d) 671, at 672, says:

> "In forfeiture the *res* by an archaism is conceived of as itself the offender."

This Court, in *J. W. Goldsmith, Jr.-Grant Company* v. *United States,* 254 U. S. 505, says that:

> "* * * whether the reasons for §3450 be artificial or real, it is too firmly fixed in the punitive and

remedial jurisprudence of the country to be now displaced."

In *Van Oster* v. *Kansas*, 272 U. S. 465, at 468, this Court again says that this thought has been too well established now to be disturbed. Nevertheless, we submit that the deodand theory is wrong in equity and justice (see "Automobile Forfeitures and the Eighteenth Amendment", by Roy W. McDonald, 10 Texas Law Review 140), and that a wrong can always be uprooted no matter how deeply it is imbedded.

We trust we will not be considered presumptuous in suggesting that this Court may well turn the face of this old idea to the wall, but if it is not in order for us to make this suggestion, it certainly is proper for us to urge, as was said in *United States* v. *Katz et al.*, 271 U. S. 354, at 357, that

> "A literal application of a statute, which would lead to absurd consequences, should be avoided * * *."

Dated the 14th day of April, 1932.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 734.—October Term, 1931.

United States of America, *vs.* Commercial Credit Company, Inc.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[May 2, 1932.]

Mr. Justice Cardozo delivered the opinion of the Court.

Three motor cars were seized by a customs officer of the United States in Texas near the Mexican border on a charge that they were employed in the unlawful importation of intoxicating liquors. Following the seizure, the Government filed a libel of information against the automobiles so employed under sections 3061 and 3062 of the Revised Statutes (19 U. S. Code, §§ 482 and 483) and prayed for a decree of forfeiture.

Thereupon, the Commercial Credit Company, Inc., the holder of a chattel mortgage, filed an intervening petition alleging that its lien had been created in good faith; that it was innocent of any participation in the wrongful use of the cars; and that by force of section 26 of the National Prohibition Act it should have an award of the possession. The District Court dismissed the intervening claim and adjudged a forfeiture, holding that sections 3061 and 3062 of the Revised Statutes were unrepealed by section 26 of the National Prohibition Act and permitted the forfeiture of articles illegally employed in the importation of intoxicating liquors (46 F. (2d) 171). The Circuit Court of Appeals reversed the decree and dismissed the libels, holding that section 26 of the National Prohibition Act had superseded other remedies (53 F. (2d) 977). A writ of certiorari has brought the case here.

Our judgment handed down herewith in No. 574, General Motors Acceptance Corporation and others against the United States of America, sustains the position of the Government that vehicles employed in the unlawful importation of intoxicating liquors may be

seized under the Tariff Act and the provisions of the Revised Statutes ancillary thereto. All that remains is to determine whether these vehicles were so employed. The cars subjected to forfeiture in No. 574 were the same that had brought the contraband merchandise from beyond the Mexican border. The cars libeled in this proceeding were laden with the liquors, for all that the evidence shows, on this side of the border line.

The difference is not one that exacts differing relief. The circumstantial evidence justifies a finding that the cars, wherever laden, were implements or links in a continuous process of carriage from Mexico into Texas. This was unlawful importation as well as unlawful transportation. The two courts below are in agreement as to the inferences fairly to be gathered from the facts, and their findings are not to be disturbed unless clearly erroneous. *Washington Securities Co.* v. *United States,* 234 U. S. 76, 78; *Texas & N. O. R. R.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 558.

The decree of the Circuit Court of Appeals should be reversed and that of the District Court affirmed.

Mr. Justice STONE took no part in the consideration and decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.